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The Workers' Compensation System of British Columbia: Still in Transition

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From the Office of the Chair
Panel Of Administrators
March 21, 1996

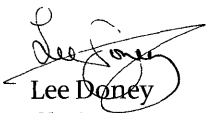
This represents the second Administrative Inventory which the authors have conducted over the past five years on the performance of the Board. Both studies represent comprehensive analysis as measured by independent, objective experts with international reputations in the field of workers' compensation.

This latest Administrative Inventory compares the performance of the Board as of July 1995 with the original study of October 1991. In that time, the authors also had the benefit of studying many similar systems across North America as background to their 1995 undertaking. What emerges in the pages which follow is a validation for those areas of significant Board achievement as well as a set of 21 recommendations for those areas requiring attention.

The passage of time between the completion of interviews and data gathering in the summer of 1995 and publication of this study in the spring of 1996 has also been a period of significant activity as the Panel of Administrators and the Senior Executive Committee have set about the task of providing a strategic plan for the organization.

The plan addresses the most significant issues facing the Board in prevention, compensation, and assessments. The measure of its success will be how well it answers the issues raised by this study, in particular those dealing with duration, safe and effective return to work, and an equitable assessment system.

As the authors of this Administrative Inventory conclude, the WCB has a critically important public policy mission to perform, day by day and case by case. We are therefore indebted to them for the work they have performed in carrying out this review and helping the Board fulfill its public mission.



Lee Doney
Chair
Panel of Administrators

FOREWORD

This Administrative Inventory of the workers' compensation system of British Columbia was undertaken at the request of James Dorsey, while he was Chair of the Board of Governors of the WCB. Mr. Claude Heywood, Interim Chair, and Dale Parker, President/CEO made the decision to continue with the project after Mr. Dorsey's departure. Finally, Lee Doney, Chair of the Panel of Administrators which replaced the Board of Governors in the Summer of 1995, also cooperated fully with the project, even though it was a very tumultuous time at the WCB.

As with the first administrative inventory, we enjoyed complete freedom of access to the WCB. No document was denied us. No individuals were unavailable. Further, WCB personnel were marvellously open and frank with us in our interviews. All these statements are to the very considerable credit of the WCB and its management, both past and present. While the changes since 1991 at the WCB have not all been positive, we feel comfortable that we have been allowed to look for the skeletons in the closet.

This document is the full and complete report of the study as submitted to the WCB. Nothing has been omitted or censored. A preliminary draft of this document, lacking chapter 9 *Attention Points*, was circulated to a number of individuals for review of the factual content. The authors remain responsible for any errors of fact or interpretation that remain. We are completely responsible for the judgments represented in chapter 9.

Acknowledgments

The largest debt that must be acknowledged is to Jim Dorsey, first Chair of the Board of Governors of the WCB of British Columbia. Jim realized that it would be difficult to measure the progress of the WCB without a yardstick. He commissioned the entire series of administrative inventories, including this return engagement, to serve as both a mirror and a yardstick for the WCB. Jim's vision and foresight have guided all of the administrative inventories, and his energy and dedication have inspired us. We respectfully dedicate this volume to Jim.

Second, we want to acknowledge the people who agreed to be interviewed, both inside and outside the WCB. Their perceptions informed and persuaded us. There is no substitute for experience, and we borrowed from their experience shamelessly. We could not have done this job without their willing participation. Only by sifting and winnowing the many diverse opinions we were offered, and searching for the facts to hang them on, were we able to make sense of the system. To those who do not feel that their voice was heard, we apologize for our obvious errors of judgment.

Third, to the WCB staff who supported us, particularly Peter Hopkins, Director of Policy and Research and Sue Dean from the Panel of Administrators office, we send a large thank you. You were there when we called, answered all our questions, some repeatedly, and maintained a patient and supportive attitude throughout the project. Hugh Legg, Executive Coordinator for the Panel of Administrators, also gave time freely from his busy schedule to discuss sensitive policy issues. We are indebted to Dale Parker, President/CEO and members of the Senior Executive Committee of the WCB who made the decision to go ahead with the administrative inventory last spring, even though it was not a convenient time for such scrutiny. Lee Doney, Chair of the Panel of Administrators, was also supportive of our mission, even though he had no opportunity to approve it or participate in its design. Thanks to all of you for the faith you put in us. We sincerely hope we have redeemed that faith.

Fourth, to Elizabeth Anderson of the Upjohn Institute, who single-handedly bore the burden of arranging our travel, transcribing our dictation, deciphering our handwriting, and putting the report together, we appreciate your outstanding work and we promise to observe fair labor standards on the next project.

Last, to our families, who have borne the burden of our extended absences and our talking about important “issues” that you could not care less about, we thank you and we apologize for all the slights and all the failings on our parts that this project has undoubtedly caused.

HAH

PSB

MJL

Kalamazoo, Michigan

December 1995

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EXECUTIVE SUMMARY

This inventory addresses eight core issues in the British Columbia workers' compensation system:

- How is the system administered?
- How do claims flow through the system?
- What dispute resolution procedures are used, and to what effect?
- What benefits are paid?
- How are vocational rehabilitation services provided?
- How is the system financed?
- What are the actual costs of administration, benefits, claims processing, and appeal?
- What aspects of the system deserve further attention?

These questions are addressed for the British Columbia system as it existed in July 1995, but historical data are generally presented for the period 1981 to 1994. Because of the change in governance structure in 1991, this study offers a unique opportunity to review the operation of a workers' compensation system under two distinct governance regimes, as well as over varied economic and political climates.

We conducted this study using a 4 — step approach. The elements are: (1) an examination of the Act and the policies developed for its implementation, (2) relevant data gathering and analysis, (3) interviews with individuals knowledgeable about the system and its operation, and (4) reconciliation of the observations we have made about the system with the viewpoints of others.

WCB Organization

The Workers' Compensation Board (WCB) is charged with the responsibility to pay the benefits specified by the Workers' Compensation Act to injured workers, their dependants and survivors. The WCB also has the right to assess employers subject to the Act for the monies necessary to "meet all amounts payable from the accident fund during the year" and to "provide in each year capitalized reserves sufficient to meet the periodical payments of compensation accruing in future years." Earnings of these reserves have been a very significant income supplement in recent years. Thus, the WCB does not administer a "pay as you go" system, but one that is intended to be fully funded and actuarially sound.

The governance structure of the WCB was substantially overhauled by Bill 27, which was enacted in 1989 and took effect on June 3, 1991. It replaced the old system of Commissioners with a Board of Governors and created a new Appeal Division, headed by a Chief Appeal Commissioner. This amounted to a separation of the policymaking and appellate functions of the old Commissioners. Bill 27 amendments also created the new position of President and Chief Executive Officer to administer the day-to-day functions of the WCB. This meant that the administrative function of the old Commissioners was also split off and handled separately.

The Board of Governors was suspended by the Minister of Skills, Training and Labour in July of 1995 due to widespread perceptions of counter-productive interest group squabbling and ineffective decision-making. While there are various interpretations of this action, it remains true that the stakeholder communities were deeply divided over certain legislative and policy issues and the governance of the WCB, and their differences could not be bridged, even by the most skilful leadership. At this point, the experiment that put representatives of workers and employers at the table to govern the WCB together must be regarded as a failure.

Compensation Services Division

The Compensation Services Division, consisting of six departments, is the largest division of the WCB. Compensation Services has responsibility for administering wage-loss, pension and health care benefits to injured and occupationally diseased workers. Thus, Compensation Services adjudicates claims for compensation by disabled workers, including the responsibility for determining the right to compensation, the benefits due and whether vocational rehabilitation services could usefully be employed to return a disabled worker to gainful employment.

Finance/Information Services Division

The Finance/Information Services Division is responsible for financing the WCB through its Assessment Department and the management of the Board's substantial investments by the Treasurer. Financial Services also includes the offices of the Controller, the Actuary, and Statistics. The Actuary and the Statistics Department work closely with the Assessment Department in analysing the experience of British Columbia's employers, both individually and collectively, and in setting assessment rates that reflect their experience.

Prevention Division

The WCB also administers the occupational safety and health program in British Columbia. The Prevention Division of the WCB administers a program of standards setting, enforcement, consultation, and education throughout the province.

Appeal Division

The Appeal Division was established by Bill 27 of 1989. The Division consists of a Chief Appeal Commissioner appointed by the Board of Governors and an unspecified number of Appeal Commissioners appointed by the Chief Appeal Commissioner, selected in accordance with policies established by the Board of Governors. The Appeal Division has authority to hear appeals from Workers' Compensation Review Board findings by employers or workers (or their dependants), referrals of Review Board findings from the President/CEO of the WCB, reconsideration of previous Appeal Division or Commissioners' decisions, occupational safety and health penalty appeals, appeals of assessment matters, and appeals of decisions under the Criminal Injury Compensation Act.

Adjudication

A WCB Claims Adjudicator determines whether compensation is payable in any particular instance. This includes the decision as to whether the claimant was employed under the terms of the Act, was injured in covered employment, whether the injury arose out of and in the course of that employment, whether the claimant is suffering from an occupational disease caused by his/her employment, and any other issues that might affect compensation. Medical Advisers are available to assist Claims Adjudicators in reaching these decisions. Of course, all such Claims Adjudicator decisions are subject to appeal to the

Workers' Compensation Review Board and the Appeals Division, and in the case of a medical judgment, to a Medical Review Panel.

The WCB is not bound by legal precedent, but decides each claim according to the merits and natural justice of the case. Board officers (Managers, Claims Adjudicators, Claims Officers, and Vocational Rehabilitation Consultants) making decisions on claims are guided by WCB policies, as promulgated by the Board of Governors.

Dispute Resolution

There are three bodies, excluding the court system, that constitute appellate bodies of the Workers' Compensation system. These are the Workers' Compensation Review Board, Medical Review Panels, and the Appeal Division. Additionally, there are procedures that allow for decisions to be reconsidered or changed, adding more opportunity for review of a decision.

Workers' Compensation Review Board (WCRB)

The WCRB is made up of panels, each consisting of 3 persons. Single person panels can also be constituted. A 3 — person panel almost always consists of one person with a background in organized labour, another person with a background on the management side and a Vice Chair, often a lawyer, who is not of a management or labour background. In special circumstances, a panel consisting of three neutrals can be named.

The WCRB may overturn an adjudicator either because it believes an error in law or policy has been made, or because it exercises a different judgment of the facts. In most cases, it is the latter that leads to a reversal of the WCB decision. On occasion, this difference in judgment arises because the claimant or his or her representative provides some information that has not been communicated previously to the claims adjudicator, not surprising since the adjudicator has not had the benefit of a hearing with professional representation for the appellant.

From 1981 to 1994, there have been only four years where the WCRB disposed of more appeals than were filed. To cope with the backlog and with the growth in appeals from 1986, the WCRB has grown in size and added more panels. Delay at the Review Board has been a widely held concern. A 2 — part appeal process was initiated in 1994. The new procedure helps focus attention on the source of the delays at this step in the appellate process.

Appeal Division of the WCB

The Appeal Division is authorized to hear appeals emanating from multiple sources, and to consider several additional matters. The procedures employed may vary depending upon the type of appeal in question. The rule that decisions be issued within 90 days, or the longer period designated by the Chief Appeal Commissioner, has been rigorously observed by the Appeal Division. Approximately 90 — 91 percent of Appeal Division decisions are based on written submissions only.

The volume of decisions by the Appeal Division involving Review Board findings has been consistently higher than in earlier years under the former Commissioners. The Appeal Division has generated two or three more times the number of decisions than did the Commissioners during their last three calendar years. A second feature is the much higher allow rates for worker/dependent appeals under the Appeal Division than under the Commissioners.

Though a party may seek satisfaction in the courts, the likelihood of this is remote. By March 1995, there had been only ten judicial reviews of Appeal Division decisions since June 1991 in the Provincial Supreme Court, with nine of the petitions dismissed thereon. The tenth was dismissed at the Court of Appeal. This is consistent with Section 96(1) of the Act which states that the decisions of the Board are “final and conclusive and not open to question or review in any court.”

The impact of the Appeal Division extends well beyond the numbers of its reported findings. On a day-to-day basis, the truly critical impact of the Appeal Division is where it affects the decisions made by Board Officers. Some officers, adjudicators, and managers undoubtedly allow their decisions to be shaped by the findings that flow down from the Appeal Division. We noted marked differences of opinion on the extent to which Review Board or Appeal Division reversals impact subsequent adjudication decisions.

The issue of whether or not the Appeal Division may be “making policy” was also raised. It seems clear that the function of the Appeal Division, as it relates to its role in interpreting WCB policies and practices and the underlying statute, is viewed very differently by contending parties.

Medical Review Panels

In a dispute over a medical issue a worker or an employer may appeal a WCB decision to a Medical Review Panel. The appeal may be made subsequent to a decision by a Board Officer, or a finding of the Review Board, or the Appeal Division. Though relatively few injured workers or dependant survivors have any

reason to utilize the Medical Review Panel process, it represents a highly significant avenue of appeal where disputes occur over medical issues. Since the determination of a panel is decisive on the matter(s) in dispute, it is the last opportunity for an appellant.

Benefits

British Columbia pays benefits that are found in most jurisdictions in North America, that is, health care, short term disability, long term disability, disfigurement, survivor's, and rehabilitation benefits. Most, though not all, benefits for compensable injuries or illnesses are associated with the worker's level of earnings at the time of the injury.

Health Care Benefits

WCB health care costs in British Columbia have exploded in recent years. On an incurred basis, aggregate health care costs increased by 90 percent from 1991 to 1994 or 24 percent per annum. Over the same time period, incurred health care costs per newly registered claim rose by 95 percent (25 percent per annum). The economic incentive created by the renegotiated fee arrangements beginning in late 1991 may have raised the cost of health care benefits. If more subsequent visits were provided after 1991, both the costs of the visit and payments for the form fees would have increased. However, if some physicians were induced to schedule added subsequent health care visits, this would have contributed also to two other phenomena that were occurring at this time, i.e., a lengthening in duration of short term disability and the increasing costs of providing those benefits.

Wage-Loss Benefits

Where a worker has incurred a compensable impairment, physiological or psychological, he/she is entitled to a wage-loss benefit, beginning the first working day after the day that the injury or illness occurred. Benefits are paid where the worker sustains a temporary total or a temporary partial disability. Indemnity benefits for temporary total disability are set at 75 percent of the worker's average earnings, subject to the statutory maximum and minimum benefits. This benefit is paid only where the worker suffers a loss of wages and are tax free. There is no maximum period of time for which such benefits can be paid.

Permanent Pensions

British Columbia employs a “dual” approach to benefits for permanent partial disability. A claimant receives benefits based on an assessment of either the degree of physiological (or psychological) impairment, called a permanent functional impairment, or the loss of earning capacity. A worker’s pension benefit is based on the alternative that provides the larger award.

Permanent disability awards are the responsibility of the Disability Awards Department within the Compensation Services Division.

The Claims Adjudicator Disability Awards has four basic sets of information to utilize, that is, the worker’s previous earnings level, the functional impairment assessment from the Disability Awards Medical Adviser, the Functional Evaluation Unit report or other supplementary information, and the Vocational Rehabilitation Consultant’s employability assessment. Based on these four elements, the Claims Adjudicator Disability Awards makes a recommendation to a 3 – person Disability Awards Committee, made up of a manager from the Disability Awards Department, a senior Disability Awards Medical Adviser, and a Vocational Rehabilitation Manager. It is this committee that has the responsibility to determine the size of any projected earning loss benefit, or loss of earnings pension, that will be paid.

Over the past 13 years, the number of pensions has grown vastly more rapidly than has the number of new wage-loss claims. Though this growth has been substantial for functional awards, it has grown even more rapidly for the more expensive loss of earnings (LOE) cases. The likelihood of a wage-loss claim resulting in a functional award is about three times greater today than 12 or 13 years ago. It is five times more likely that a LOE pension will be awarded. Unless the case is made that more serious injuries and illnesses have been developing, it seems reasonable to argue that the standards for gaining a pension have been lowered over time, especially for LOE pensions. One could argue, further, that the aging of the workforce and the downsizing of some industries have played a contributory role in the growth of the LOE pensions.

Vocational Rehabilitation Services

Vocational rehabilitation services are provided to injured workers, and in some cases to the workers’ dependants in order to offset the effects of compensable injuries, industrial diseases and fatalities in accordance with Section 16 of the Workers’ Compensation Act. Services provided include vocational assessment and planning, counselling, skill development, job readiness and placement assistance, and employability assessments.

The Vocational Rehabilitation Services Department is located within the Compensation Services Division of the Workers' Compensation Board (WCB). During the past 4 – year period (1991 – 1995) there have been numerous organizational changes that have affected services provided to injured workers and the support required by the Vocational Rehabilitation Consultants in carrying out their multifaceted role.

In terms of eligibility for services, it is the Vocational Rehabilitation Consultant (VRC) who makes the determination and identifies the nature and extent of vocational rehabilitation services to be provided, based on whether it appears that such assistance may be of value to a WCB client. As a result of the discretionary nature of eligibility decisions and service provision, the philosophy and values of the Department (in the form of both formal and informal policy) take on great importance in the delivery of services to injured workers.

Structural and management changes appear to have contributed greatly to the general loss of focus and morale among the consultant group, a significant and sustained increase in spending patterns, and what is generally perceived to be an overall decline in the quality and accountability of vocational rehabilitation services provided to clients during the past four years. The manager's role has been adversely affected by leadership limitations. There has also been a lack of formal training available for new and continuing management staff. The complexities associated with managing a professional vocational rehabilitation staff are daunting, particularly within a matrix management system. At the manager level, there has also been a great deal of turnover, even prior to the formal dissolution of the Department in 1993.

Given the fact that there was virtually no structure to provide supervision over the past two years combined with the limited experience of a number of consultants, systematic clinical supervision, ongoing training and quality assurance appear critically deficient. Addressing this concern appears to be a high priority of the new management structure in the Department. However, even with the newly designed organizational structure there are serious barriers to effectively carrying out these important supervisory tasks.

One of the principle issues that emerges when discussing the vocational rehabilitation process is expected outcome. While a great deal of divergent opinion exists among consultants, managers, and worker advocates, the issues appear to centre around whether the WCB's mission is to provide services to injured workers to enhance "employability," or to focus on "placement" and the return to actual employment. A related and even more relevant question is at what point in the process have sufficient services and resources been applied to terminate the case without an employment outcome?

In discussions with advocates there appear to be a number of issues where a general consensus of opinion exists among these representatives in relation to vocational rehabilitation services provided at the WCB. For example, some of the major concerns related to the lack of early intervention efforts with the client and employer, and attempting to maintain worker attachment. These representatives felt that the WCB should put more pressure on employers to participate in return to work efforts. Delays in the system were seen as a significant concern and related to the increased costs of the Department.

Further, the focus of the Department was perceived as centering on wage loss as opposed to rehabilitation service provision. They also expressed concern about the entire claims and rehabilitation process, pointing out the negative effects of the linear nature of the process and the fact that only one issue at a time is dealt with, as opposed to bringing together all available resources to address the issues in an efficient and effective manner. Finally, they expressed concern about the qualifications, training and credentials of the Vocational Rehabilitation Consultants in providing vocational rehabilitation services to injured workers.

In 1994, which represents the last calendar year of complete data, the WCB spent \$68,606,888 on injured workers through its provision of vocational rehabilitation services. This represents a 50 percent annual rate of increase in expenditures from 1991. Further, this increase occurred during a period where new referrals for services actually decreased by 9.4 percent per year.

The Assessment Department

The Assessment Department determines the assessments against employer payrolls, including classification, monitoring, collections, and administration of the experience rating plan. Overall, the Department is responsible for financing all WCB activities, as determined by the Board of Governors, and doing so in a reasonable and equitable manner.

The growth rate in total assessment revenue from rateable groups from 1982 through 1994 has been rather modest (5.2 percent annual increase), and even more modest in real terms (1.3 percent annually). Revenues from deposit accounts have increased by 3.0 percent annually over the period (declined by 0.9 percent annually in real terms); but have been subject to substantial fluctuation. OSH penalties have increased phenomenally (15.0 percent annually, 10.7 percent annually in real terms) over the period, reflecting changes in WCB policy and practice. Assessment penalties also varied widely from year to year during the period (but declined in real terms by 3.3 percent annually).

Employers in British Columbia report their payrolls, and calculate and send in their WCB assessments on either a quarterly or annual basis. Those firms whose total assessment is expected to be under \$500 file annually; those with larger assessments file quarterly. While the WCB Assessment system is therefore a self-reporting system, there is a demonstrated need for an audit function to ensure that all employers are meeting their reporting requirements and payment obligations in an accurate and timely manner. The audits are the “enforcement” side of the Assessment Department, but they also serve a vitally important equity function by assuring employers that everyone is carrying their fair share of the load.

In 1992, the Administrative Inventory of Assessments reported universal agreement by employers that the Assessment Department was “too secretive.” In 1995 we found this was no longer a problem, due to changes in Assessment Department policy and procedure, influenced in part by Freedom of Information and Protection of Privacy Act requirements. The Assessment Department now makes the WCB classification for all employers available as a matter of public record. This seems to have satisfied the need for more information.

In a random survey conducted by an outside consultant in 1995, the overall performance of the Assessment Department was rated as “excellent” by 6 percent of employers, “very good” by 51 percent of employers, and “average” by 40 percent of employers. This is a substantial turnaround since 1991.

Experience Rating (ERA) Program

The ERA plan in British Columbia is moderate in its provisions; it seeks to encourage individual employers to create safer workplaces, but without unduly compromising the fundamental principle of collective liability. The maximum merit and demerit is 33 percent; that is, the best (worst) employers receive merits (demerits) of 33 percent, and hence are assessed one-third less (more) than the average rate for their sub-class. This means that the worst performing employers in a sub-class pay exactly twice the assessment rate paid by the best employers in that sub-class.

Performance Evaluation

The number of new claims registered at the WCB declined precipitously from 1981 to 1982 (by 19 percent — three times as great as the employment decline), and did not begin to increase until 1987. Then new claims rose rapidly through 1990, only to subside once again with the recession and coincident with the governance changes at the WCB.

This seems to reflect a complex mix of secular, cyclical, and policy trends. The secular trend of employment by sector is leading to declining exposures to traditional risks of injury in the workplace. But cyclical labour market conditions hide much of the secular decline. However, there seems to be a long-term declining trend in wage loss claims when controlling for employment levels. Further, the peaks in wage loss claims correspond very closely with troughs in the unemployment rate and vice versa.

When we break the analysis down by type of claim, the same basic trends are apparent. The trend in claims receiving health care only and short term disability claims first paid reflect a similar pattern, with a clear cyclical effect evident. The same is true for fatal claims, although the variation is greater in fatal claims. Long term disability claims, however, clearly increased over the period. The total lost workdays paid by the WCB per 100 workers has trended up significantly since the mid 1980s.

Over the entire period of 1981 through 1994, lost workdays per 100 workers increased by only 1.1 percent per year. However, the trend from the low point in 1985 through 1994 was 3.9 percent per year. In the mid 1990s the WCB is paying two lost work days per worker per year, up from 1.5 a decade earlier. Given sectoral employment trends and WCB prevention efforts, this figure presents a disappointing picture. One would hope to see a declining burden of disability due to workplace injury and illness. It is important for the WCB and policymakers to gain a better understanding of these trends.

Paylag Performance

The primary measure of promptness of payment that is used by the WCB is the paylag statistic, the percent of wage-loss claims where payment is made within 17 days of the first lost work day. Of course, the performance of an individual adjudicating unit depends largely upon the particular assignment the unit has taken on. The paylag measure is most appropriate for relatively simple short-term disability claims; nevertheless it has relevance for all units because of its direct relationship to perceived customer service performance. In particular, the trend in paylag over time can signal improvement or deterioration in average timeliness.

For the entire WCB, 42 percent of short term disability claims were paid within 17 days in 1994. Individual SDL performance varied from 30 percent to over 70 percent. Historically, lower mainland adjudication units have shown higher paylags (poorer performance) than area offices. The lack of improvement in paylag in recent years, despite increasing staffing levels in the Compensation Services Department, is a disappointment. Current divi-

sional management has developed a number of initiatives to improve this critical customer service dimension.

Duration of Wage Loss Payment

Data on duration of disability are limited and difficult to compare. However, it seems clear that average durations have been rising, and rising rapidly at the WCB in recent years. Of course, this reflects the relative incidence of temporary and permanent disability claims over time as well as labour market, demographic, and other influences. However, available evidence seems to show that average durations are increasing in every severity category. Such a trend needs immediate attention; it is critical to understand such a powerful cost driver.

Appellate Activity

The British Columbia workers' compensation system is fairly free of litigation, at least by North American standards. However, there is some question about whether recent trends threaten that state of affairs. Appeal activity at the Workers' Compensation Review Board grew rapidly during the period 1981 to 1994. It reflects an annual increase of nearly 9 percent in appeals received at the WCRB, 7 percent annually when corrected for employment levels. In other words, disputed claims are increasing more than four times as fast as employment in British Columbia and more than eight times as fast as new claims registered with the WCB.

Administrative Costs

The WCB performs an invaluable public mission, and the cost of performing that mission is not the only consideration in evaluating the performance of the agency. However, administrative costs are an issue, particularly in these days of scarce resources, and the efficiency of the WCB as an administrative entity is relevant to both injured workers and their employers. WCB administrative costs have grown substantially faster than inflation since 1987. For the entire period, administrative costs grew at an unadjusted rate of 10.0 percent. After adjusting for general inflation and increases in employment, the real growth rate per capita is revealed to be 3.2 percent per year. Again, it seems apparent that this growth began well before the change in WCB administration in 1991. It is also clear that the upward spiral ended in 1994. Control of administrative costs is a priority of the current WCB management.

System Costs

Total Accident Fund payments have increased by 9.6 percent annually from 1981 through 1994. Further, this represents a sizeable increase of 7.5 percent per year in payments per employed worker. It appears that wage-loss payments, health care benefits and pension payments have all contributed substantially to these increases. However, over the entire period pension payments grew the fastest, at 12.4 percent per year.

Investment Income

WCB annual investment income rose from less than \$150 million in 1983 to around \$350 million in 1993, increasing from 23 percent to 33 percent of total revenues. This greater contribution of investment income reflects the increasing reserves held by the Board for future obligations, as well as improved investment performance. During the latter half of the 1980s, the annual investment return on reserves exceeded the WCB discount rate (2.375 percent until 1993) by more than the rate of inflation. Real rates of return on WCB investment ranged from 5.4 to 7.8 percent annually over this period, making a very tangible contribution to WCB income and permitting lower assessment rates than otherwise would have been necessary.

Assessment Rates

The net impact of the growth in benefit costs, administrative costs, assessment base, and investment income is reflected in average assessment rates. To employers, this figure represents the "bottom line." Assessment rates came down in the late 1980s as the fund approached a fully funded position in 1986 against a backdrop of reduced employment, declining claims, and falling costs. As claims and costs picked up again in the latter 1980s the fund moved back into a deficit position. The surplus was exhausted by 1992 and the Board has been slightly underfunded since. In the early 1990s, the WCB was trying to attain a fully funded position without dramatic increases in assessment rates. However, the drain of rapidly rising pension and health care costs kept that goal elusively out of reach. Current plans at the WCB call for attaining annual funding balance by 1997 and a return to full funding by the year 2000.

Attention Points

We hope that the issues we identify for attention here will resonate with decision makers in British Columbia. In most instances, these “attention points” are identified as such because they represent special strengths of the system or because they may warrant, at least in our opinion, additional attention by those who seek to improve the system. We have specifically not made a special attempt to match the attention points from 1991 or 1992 nor to document all the progress, or lack thereof, since 1991. We prefer to think of this as a fresh look at the WCB, informed by the perspectives of the past.

External Community Relations

The WCB of 1995 is vastly more open and responsive than it was four years ago. More information is available and greater access is provided. Still, while a great deal of effort has gone into improving access for stakeholders at the WCB since 1991, the yield has been disappointing. Attitudes of suspicion and distrust are all too prevalent, particularly between employer groups and worker groups. Neither trusts the motives of the other side when dealing with policy issues. Many times the WCB gets caught in the middle and ends up earning the enmity of both sides.

Thus, the structural changes of 1991 apparently did not achieve the desired result of giving ownership to the system’s stakeholders, at least not in a way that enabled them to govern jointly. Moreover, with partisan critics waiting for any opportunity to embarrass the WCB and the current government, it will be even more difficult to address the legitimate policy concerns of the stakeholders. With the current attitudes of the organized employer and labour communities, it will be hard to reach consensus on desirable system changes.

Policy and Performance Issues

There are a number of system performance issues that will be mentioned here. Some are beyond the reach of the WCB and would require statutory action. Others are a matter of policy implementation that is under the control of the WCB. One underlying theme that characterizes nearly all of these issues is a lack of adequate analysis about causes and consequences.

Pension Incidence and Cost

Pensions have been growing faster than any other type of claim in the system. While there are many competing explanations for this, none of them can be proven correct. The contributions of secular trends, demographic forces, policy changes, and system performance variables need to be sorted out to establish the causes of the enormous level of growth in loss of earnings pensions. It is difficult to attack the problem in a sensible way without a more adequate understanding of the underlying causes.

Medical Care Costs

The alarming growth in medical care costs is a problem throughout North America, but many jurisdictions have moved more rapidly than British Columbia to implement cost control techniques for medical expenditures. Not only has British Columbia come late to the case management model, but there is evidence of perverse incentives in the substantial form fees negotiated by the WCB with the BC Medical Association in 1991. The relationship between subsequent visit form fees and the apparent increase in subsequent visits needs to be examined.

Durations of Disability

To date there has been no satisfactory explanation given for the rising durations of disability at the WCB. It may be due to an increasing complexity of adjudication issues, it may be due to the form fees incentive for subsequent medical treatment visits, it may be due to the initial/ongoing adjudication model. In truth, it may be due to all or none of these. The problem is that no one knows, so it is impossible to design an effective strategy to reverse the situation. Since the ultimate purpose of the WCB is to prevent disability, not to encourage it, a much greater priority should be given to understanding the rising duration of disability.

Timeliness

Despite the addition of considerable resources to the Compensation Services Division since 1988 (without a significant increase in initial claims activity) the paylag situation seems to continue to deteriorate. It now seems clear that doing the same old things in the same old ways will not turn this situation around. The new WCB management and existing staff deserve credit for having figured

this out some time ago, and they are moving to attack the problem in a number of ways. Still, until concrete, tested and proven solutions are implemented, the problem remains critical to WCB performance as experienced on the street.

Vocational Rehabilitation

There are some bright spots in the vocational rehabilitation area. The comprehensive Rehabilitation Centre in Richmond is one of the jewels in the WCB crown. The Functional Evaluation Unit is unsurpassed in its technical sophistication. The broad array of rehabilitation benefits is outstanding. Rehabilitation performance figures seem only average however. Further, vocational rehabilitation expenditures have exploded at rates that no one can adequately explain. The lack of leadership for two years and the fundamental lack of consensus about the mission of vocational rehabilitation mean that there is a lot of remedial work to be done.

The WCB needs to develop a clearer understanding of the mission of vocational rehabilitation and the organizational supports that will be required to accomplish that mission. Greater clinical supervision and more adequate professional development are required for Vocational Rehabilitation Consultants. New models of service delivery and program evaluation are needed as well. In addition, referral relationships and additional service capacity need to be developed in the community. Finally, the Vocational Rehabilitation Department needs to engage in research efforts to inform future policy and practice.

This is a short-term agenda. Over the longer term the WCB also needs to work to raise the professional preparation of Vocational Rehabilitation Consultants, both by supporting efforts in the community to develop additional educational resources and by raising the job requirements for the individuals hired.

Disability Management

In the private sector, disability management techniques are being used to attack, apparently successfully, both the incidence and the duration of disability. It is true that the financial payoff accrues primarily to private employers and private insurance companies, but the injured worker gets back to making his or her living more rapidly, as well. Ultimately, it appears that this also leads to fewer cases of the self-defeating psychology of learned disability. The WCB needs to develop mechanisms to actively manage disability for the benefit of the injured worker and his/her employer. Only in this way can the true cost of disability be minimized for the benefit of the entire society.

Benefit Adequacy and Equity

There has been no general review of the adequacy and equity of the workers' compensation benefit structure in British Columbia. Maximum benefits are among the best in North America, and this is a record to be proud of. But no one knows how injured workers at different earning levels and in varying family situations are faring. A simple comparison of how injured workers in various situations are compensated, particularly as compared to other Canadian jurisdictions, might be very enlightening. A generous maximum benefit is not enough, benefits should be both equitable and efficient across the entire injured worker population.

Classification Issues For Rate-Making

The recent furor over reorganization of class 621, Retail Stores provides an object lesson in the damage an inappropriate classification structure for rate-making can do. There are probably several other sub-classes that have similar, though smaller, problems. The new program of round table discussions with "troubled" industries that has been implemented by the WCB should surface these problems earlier and in a more appropriate environment. However, it would also be appropriate for the WCB to increase its vigilance for sub-class problems and for classification inequities, in the long-term interest of the perceived fairness of the system.

Experience Rating

Experience rating continues to be a controversial subject in British Columbia. This is true despite the near universal endorsement of the concept of experience rating by the employer community. It is controversial because organized labour remains adamantly opposed to the concept. It is troubling that energy still goes into fighting the concept of experience rating in British Columbia, as opposed to designing a more effective program. Perhaps the new WCB study of the ERA program currently underway will promote a more productive dialogue about the policy design issues of experience rating, it is overdue.

Financial Performance

While the size of the unfunded liability is a source of criticism by stakeholders, in fact the performance of the WCB over the last decade has been very good. There is always a tension between benefits for workers and costs for employers

in workers' compensation systems. Achieving a balance between these two opposing objectives is difficult. The combination of generous benefits at reasonable costs has been pursued very responsibly in our opinion. British Columbia is among the very best systems in North America for both injured workers and their employers.

Administrative Issues

In addition to the policy and performance issues above, there are a number of observations that relate to administrative issues. We offer these primarily for consideration by WCB management.

Administrative Cost Control

The WCB has compiled a very uneven record in controlling administrative costs. But the annual budgeting and strategic planning process that has been introduced over the past two years at the WCB should make a major contribution by providing the predictability to resolve the stop-go method of funding. This has been long overdue and the WCB deserves credit for this substantial improvement.

The staffing growth in the Compensation Services Division over the last several years cannot be demonstrated to have resulted in significant performance gains in the adjudication or management of claims. The promise of the new initiatives in the Division is great, but past performance must temper our enthusiasm for these changes. The entire SDS effort needs to be carefully managed and nurtured as a critical part of the WCB's long-term commitment to customer service and value, as well as employee satisfaction and productivity.

Staff Development

The WCB has a tremendous reservoir of talent among its staff. Unfortunately, that talent is neither encouraged nor consciously developed as a regular part of doing business at the WCB. Staff development seems to be treated as an add-on; but service-oriented businesses cannot afford to put staff development last on the priority list. The WCB management needs to empower their employees, since they are the ones with the potential to make the WCB a better organization. Admittedly, this is a different style of leadership than has characterized the WCB in the past. However, we believe it is the key to better performance at lower cost in the long run.

Policy Guidance

The WCB is long on rules and handbooks and short on general policy guidance. But it must be pointed out that concentrating on writing procedures down and “doing it by the book” is a conscious organizational choice. The alternative is to train employees carefully in the goals and objectives of the organization, and then empower them to get the job done. Such a change offers the potential for the WCB to move beyond its current organizational limitations.

Collective Bargaining Relationship

There is a great deal of improvement possible in the relationship between the WCB and the CEU. The past tradition at the WCB has been challenged by the New Directions team within the Assessments Department. It needs to be challenged in other venues as well. If the WCB is going to become a high-performance organization, the collective bargaining relationship will need to become a more cooperative, mutual relationship that focuses on final organizational outcomes rather than narrow self-interest.

SDL Issues

The reorganization of the SDL's in 1993 seems to have been a positive thing, despite the adjudication crisis that it spawned. This appears to be a significant area of WCB improvement since 1991, according to our interviews. However, the role of SDL management has emerged as a new problem. The combination of the CEU contract provisions, the adjudication emergency, and budget stringency have reduced the scope for manager action. The queuing system of assigning cases to individual adjudicators takes the backlog burden off their desks, but deposits it on the desk of the SDL manager. This is appropriate, but the manager must then be given the resources and flexibility to respond to this situation. Lastly, we continue to question the value of manager reviews. No doubt there are some situations where they are productive, but the bulk of opinion we heard, both inside and outside the WCB, is that they do not serve any useful purpose as an appeal from the original decision. With the manifold other appeal avenues available to WCB claimants, and the increasing burden on SDL management, we do not feel they are worth the effort.

System Support

The WCB has sometimes struggled with its internal services. ISD particularly is the subject of internal resentment; virtually no one at the WCB feels they are getting their “fair share” of computing resources or support. Now, under new leadership, it appears that ISD is becoming more customer oriented. The “market oriented” philosophy of the Division promises a more efficient allocation of resources. These are healthy changes that have the potential to ensure that support services actually serve the ultimate mission more effectively.

Research

There is still no unit at the WCB that is asking the critical policy questions, the “why” questions, and then gathering the information and doing the analysis required to answer those questions. We believe that this is a major deficit. This has been demonstrated with most of the issues that have been discussed here. The development of a Policy Bureau to serve these needs is under discussion. We urge the establishment of such a unit with both an external and internal mission. Externally, the WCB needs to build credibility with stakeholder interests and with governmental authority. Over time, this can be done only if the WCB becomes the source of truthful, authoritative analysis that informs stakeholder opinion. Internally, the WCB is in desperate need of the analytical capacity to explain its own performance. Ultimately the WCB cannot take control of its destiny unless it can define its own problem areas and ways to resolve them. Without an effective policy research function, the WCB is dependent on others to define its failures.

Appellate Issues

There are a number of issues that arise when considering the appellate process in British Columbia. We will concentrate on those that pertain to the WCB and abstain from making recommendations about other organizations.

Medical Review Panels

The MRP process seems to still be in distress. The delays in securing an MRP decision are unacceptable. Recent changes to the process initiated by the WCB promise substantial relief, but this situation must be continually monitored. Also, the high rate of reversals of medical decisions at the MRP needs explanation. Does

this indicate a difference of standards, insufficient information, or the imperfect state of medical knowledge? Again, more analysis of the problem is needed to support design of effective solutions.

Relations with Review Board

Relations between the WCB and the Workers' Compensation Review Board seem to have substantially improved from the situation in 1991. While the adjudicatory demands on the Review Board continue to spiral upward, bureaucratic fighting with the WCB does not provide a further drain on resources any longer. The virtual elimination of "reconsiderations" of WCRB decisions by the WCB has obviously been very important. The Appeal Division treatment of the WCRB as a separate, independent appellate body also seems to have helped.

Appeal Division

The Appeal Division has become very controversial, particularly among employer groups in the province. Yet the Appeal Division has been well run, it may be the best in North America in terms of the timeliness of reasoned, written appellate decisions. The fact that court reviews have been so rare and so unsuccessful, also argues that the Appeal Division is doing its job. Yet, allegations of biased decisions continue to be heard. The issue of whether the Appeal Division is making policy is also raised by employer interests.

It is apparent that the question of the independence of the Appeal Division was not adequately settled in the drafting of Bill 27, nor by the Munroe Commission report that preceded it. The debate over whether the Chief Appeal Commissioner is an independent, external reviewer, or a part of the top management of the WCB, obliged to enforce WCB policy as she interprets it, continues to this day. Employer distrust of the individual selected as Chief Appeal Commissioner in 1991 has contributed to the acrimony of the debate.

Ultimately, it may be beyond the capacity of the WCB Board of Governors, or its replacement, to resolve the issue of whether the structural relationship between the WCB and the Appeal Division, as it exists today, is appropriate. It may require legislative resolution at this point. But the WCB must get beyond this critical structural issue, if it is to re-enlist stakeholder participation and mobilize resources to attack the other problem areas in its mission.

Conclusion

The reason given for the suspension of the Board of Governors in July 1995 was that they could not put aside their narrow interest group identity to make decisions that were in the broader public interest. The gridlock that resulted from a collective bargaining approach to policy making will not disappear overnight. But it may create the opportunity for a more pro-active WCB role that seeks to define and resolve policy issues through leadership and analysis, rather than interest group bargaining. We believe it is time for the WCB to finally shed its paymaster tradition and develop a more analytical approach to the mission. We sincerely hope that our suggestions will be helpful as the WCB goes through this intense period of recovery and renewal.

Chapter 1

INTRODUCTION

Improving the effectiveness of workers' compensation programs is an increasingly urgent theme in legislative debates across North America. Certainly workers have always been concerned that benefits be adequate, prompt and delivered in an equitable manner. Increasingly, employers also have paid attention to the program, especially as international competitiveness issues have become so critical. In addition, the past decade has seen workers' compensation insurance carriers question the adequacy of insurance rates as a public policy issue. Workers' compensation costs are routinely cited as an important factor in economic development and plant location decisions, and have become one of the stock-in-trade items for industrial development consultants. However, there are very few sources that describe how individual state and provincial workers' compensation systems actually function; even fewer that take a comparative perspective, either across different systems or over time.

The methodology of this study is derived from a series of such studies published in the United States by the Workers Compensation Research Institute of Cambridge, Massachusetts. Administrative Inventories have been published by the Institute on some 15 U.S. states to date. However, British Columbia was the first Canadian province to sponsor an administrative inventory in 1991. The series was originally developed to assist public policy makers and other interested participants in making informed comparisons across jurisdictions. The inventories use a common outline, and to the extent possible, address the same basic issues of workers' compensation structure and function. We have adapted this model to accommodate the unique features of Canadian workers' compensation systems.

This study originated because of the interest of James E. Dorsey, first Chair of the Board of Governors of the Workers' Compensation Board of British Columbia (WCB). Upon his appointment in November 1990, he saw a need for an evaluation of WCB operations that would establish a baseline against which future change could be measured. He requested that the Upjohn Institute assemble a team of experts to perform an Administrative Inventory of the British

Columbia system, using the already established format, but adapting to the Canadian environment as necessary. The initial result of that challenge was published as *Workers' Compensation in British Columbia: An Administrative Inventory at a Time of Transition* (Richmond, British Columbia: Workers' Compensation Board of British Columbia, 1991) by Hunt, Barth and Leahy.

Subsequently, other works were commissioned which also followed the general model established by the first Administrative Inventory. These included *Occupational Safety and Health in British Columbia: An Administrative Inventory* (Richmond, British Columbia: Workers' Compensation Board of British Columbia, 1992) by Rest and Ashford, *Workers' Compensation Board of British Columbia Assessment Department Administrative Inventory* (Richmond, British Columbia: Workers' Compensation Board of British Columbia, 1992) by Hunt, and *Medical and Rehabilitation Programs in Workers' Compensation: An Administrative Inventory in British Columbia* (Richmond, British Columbia: Workers' Compensation Board of British Columbia, 1993) by Fulton and Atkinson.

From the beginning, Jim Dorsey's vision was that the same research team would return in 1995 to reassess the state of workers' compensation in British Columbia. This volume represents the sum of the insights the authors have gained in three separate studies of the British Columbia workers' compensation system over a 5-year period. The descriptive material concentrates on the most recent results, gathered through the spring and summer of 1995 in a total of seven week-long visits by members of the project team.

The objective of this volume is to describe, with supporting evidence, how the workers' compensation system in British Columbia actually functions, and to do so in a way which maximizes the comparability with the other administrative inventories. The intent is to allow policymakers in British Columbia, and other interested persons, to obtain an understanding of the major features of the British Columbia system. We also endeavour to provide a comparative perspective with other Canadian jurisdictions, where relevant.

The Scope of the Study

This inventory addresses eight core issues in the British Columbia workers' compensation system:

- How is the system administered?
- How do claims flow through the system?
- What dispute resolution procedures are used, and to what effect?
- What benefits are paid?
- How are vocational rehabilitation services provided?
- How is the system financed?
- What are the actual costs of administration, benefits, claims processing, and appeal?
- What aspects of the system deserve further attention?

These questions are addressed for the British Columbia system as it existed in July 1995, but historical data are generally presented for the period 1981 to 1994. Because of the change in governance structure in 1991, this study offers a unique opportunity to review the operation of a workers' compensation system under two distinct governance regimes, as well as over varied economic and political climates. Because of the desire to facilitate comparisons across time, some analyses will use explicit comparisons between the 1981–90 and 1991–94 periods. The latter period represents the period under scrutiny, while the former can be thought of as a kind of base, or control, period.

The reforms implemented in 1991 pertained mostly to the areas of governance of the WCB and appeals from WCB and Workers' Compensation Review Board (WCRB) findings. In both instances the statutory amendments of Bill 27 provided entirely new structures, as described below. The separation of the administrative, policy-making, and appellate functions of the former Commissioners of the WCB in 1991 was a major change, but delegating law and policymaking to a tripartite decisionmaking body was a bold experiment. By bringing labour and management to the table to govern the system together, legislators in British Columbia demonstrated their faith in industrial democracy. The replacement of this governance structure in the summer of 1995 creates an historic opportunity to assess its performance in retrospect.

However, other forces have also produced fundamental changes in the British Columbia workers' compensation system. The most remarkable feature of the WCB to outside observers in 1991 was the relative dearth of interest shown by employers in the system. That has very definitely changed, and changed dramatically. This is due, in part, to the governance changes at the WCB. But it also

reflects broader political, social, and economic trends that have shaped the system over the past five years. It also is a manifestation of policy changes put in place earlier, such as the imposition of the near-universal experience rating system (ERA) in the late 1980s.

We subtitled our first administrative inventory “a system at a time of transition.” That phrase is still accurate four years later. This volume attempts to describe the current system, but the historical perspective also helps to frame our perceptions of this complex and dynamic social institution, the Workers’ Compensation Board of British Columbia.

Research Approach

We conducted this study using a 4-step approach. The elements are: (1) an examination of the Act and the policies developed for its implementation, (2) relevant data gathering and analysis, (3) interviews with individuals knowledgeable about the system and its operation, and (4) reconciliation of the observations we have made about the system with the viewpoints of others.

The Act and Its Implementation

We began the re-inventory with an examination of changes to the Workers’ Compensation Act since 1991, Board of Governors decisions, revised policy manuals from the WCB, *Board Talk* (the WCB bimonthly magazine), policy documents from the Workers’ Compensation Review Board, and published issues of the *Workers’ Compensation Reporter*. We reviewed WCB Annual Reports from 1991 through 1994, as well as other published and unpublished literature on the British Columbia workers’ compensation program. Much of this material was provided to us by the individuals we interviewed during the course of the project.

Two uniquely useful sources were the “WCB Bulletin,” published monthly to report on activity at the Board of Governors, and “News From the Senior Executive Committee,” which performed a similar function for the administrative side of the WCB. Those two sets of documents were invaluable in gaining an overview of the flow of policy and administrative decisions over the last few years.

Another useful resource was the set of policy manuals published by the WCB. The *Rehabilitation Services and Claims Manual* was helpful to understanding the way in which Board policy is actually applied. The *Assessment Policy Manual* performs a similar function in describing the methods used to finance WCB operations. These manuals were adopted as published policy of the Board of

Governors in 1991 and have been amended occasionally since. Materials developed for training WCB officers were also helpful. The *Claims Adjudication Handbook* and *Vocational Rehabilitation Services Procedures Handbook* were designed to orient new WCB employees, and they did the same job for us. We also used the *Workers' Compensation Review Board Policies and Procedures Manual* to help in understanding the appeal process at the WCRB. Appeal Division matters were investigated with the thorough series of Annual Reports issued by the division, plus review of the written record in the *Workers' Compensation Reporter*.

Data Collection

The WCB and WCRB provided us with the data we requested covering the past 14 years of system performance. The data are designed to provide a clear perspective on the present status of the system, but also to assist with an understanding of the antecedents of today's system, in other words, to provide some historical perspective. Where the previously reported data had been revised or restated, we satisfied ourselves that the restated numbers provided a more consistent perspective before we adopted them for publication in this volume. Thus, the authors believe that the data presented here represent the most accurate representation of WCB operations available. These data are displayed in Appendix Table A-1.

Many times it has been necessary to qualify the observations drawn from the data, as there are many economic, social, statutory, and administrative changes impacting on the system, and measurements made over such a long period of time are not always comparable. We have tried to keep such qualifications to a minimum in the interest of effective communication. We hope we have not distorted system performance in the process.

One example deserves specific mention because it is so pervasive. There are no accepted time series data for "covered" employment under the Workers' Compensation Act. However, it is well known that coverage has increased irregularly over the years, particularly in 1994. However, rather than impose an artificial estimate of covered employment for each year, we have simply used estimated total employment in the province across the entire period. Since covered employment has risen relative to total employment, this results in a systematic but unknown bias in favour of earlier performance figures, when the gap between covered and total employment was wider.

Interviews

The face-to-face interviews were designed to probe beyond the statutory language and policy manuals, to discover how the law actually is implemented and how people experience it. In the 1995 round alone, we interviewed over 125 individuals with substantial experience in and around the British Columbia workers' compensation system. They represent a wide variety of interests; claims adjudication personnel, vocational rehabilitation consultants, Service Delivery Location (SDL) managers, appellate staff, and medical personnel, as well as the top management at the WCB. Labour stakeholders interviewed included representatives of the Teamsters, Operating Engineers, Food and Commercial Workers, Plumbers and Pipefitters, Carpenters, Electrical Workers, IWA, Trades Council, and the BC Federation of Labour. We also met with representatives of the United Association of Injured and Disabled Workers. Employer stakeholders interviewed included representatives of the BC Mining Association, Council of Construction Associations, Council of Forest Industries, Canadian Federation of Independent Business, BC Construction Association, and the Employers Forum.

We talked with the Chairperson of the Workers' Compensation Review Board, the Registrar of the Medical Review Panel, and one of the Medical Review Panel Chairs. Other groups that have an official interest in the workers' compensation system, such as the Ombudsman of British Columbia, the Workers' Advisers Office, Employers' Advisers Office, and the Ministry of Skills, Training and Labour were also included. All the individuals we interviewed in 1995 are listed in Appendix Table A-2.

We made special attempts to get a diverse set of perspectives to help clarify our view of various parts of the system. The research team of three individuals spent a total of over seven weeks on site in British Columbia over a 4-month period attempting to insure that we had absorbed as many as possible of the different perspectives on the WCB. Each time, we returned to our offices burdened with dozens of documents to pore over and digest before returning again to British Columbia. We spent literally hundreds of hours interviewing WCB staff in Richmond. We visited three area offices (Victoria, Prince George, and Abbotsford), and we interviewed dozens of outsiders who had reason to be particularly well informed about the functioning of the WCB, or who simply represented what we considered to be a valuable and interesting perspective.

Reconciliation

Finally, we submitted the analysis and conclusions that resulted from this process to many of the people we interviewed, the people who know the system best. The Draft Final Report (without Chapter 9, Attention Points) was circulated to about 60 persons for their review and comment in the Fall of 1995. Their cooperation made the study possible in the first instance, as they freely and openly shared their points of view with us. Their willingness to cooperate further by checking our perspectives has been invaluable to completion of the study. The authors, however, remain responsible for any errors of fact or interpretation.

A limitation of the research approach is that we did not have the opportunity to survey or to interview a large number of individual injured workers or their employers. Since injured workers are the major beneficiaries of the workers' compensation system, that can be a serious shortcoming. However, the time and expense involved in securing a representative sample of claimants were prohibitive. In addition, the WCB has recently moved to collect such feedback from external stakeholder communities on its own. Thus, this report relies on the Workers' Advisers Office, the Ombudsman, the representatives of organized labour, injured worker advocacy groups, employer associations, the formal surveys sponsored by the WCB, the staff of the WCB, and our own insights to represent the views of injured workers in British Columbia. We hope they will feel that this is their report as well.

Organization of the Report

The report follows the list of basic questions given above. The second chapter provides an overview of workers' compensation governance in British Columbia; who is responsible, to whom are they responsible, and how did they get there? The third chapter examines the administration of the British Columbia workers' compensation system. This chapter describes the structure and function of the Compensation Services Division and other operating parts of the WCB. It also contains a brief overview of the claims process, including how claims originate and are adjudicated, and how they flow through the entire workers' compensation system.

Chapter 4 discusses the dispute resolution mechanisms in British Columbia, including WCB manager reviews, Workers' Compensation Review Board, Medical Review Panels, and WCB Appeal Division structure and proceedings. Chapter 5 describes the benefits available to workers' compensation claimants in British Columbia. The sixth chapter is concerned with the vocational rehabilitation system maintained by the WCB, including the Leslie R. Peterson Rehabilitation

Centre in Richmond. Chapter 7 examines the structure and operation of the Assessment Department as it pursues its critical mission of financing the Board from assessments on individual employers. Chapter 8 presents an overview of system outcomes. This chapter includes both a longitudinal analysis (1981 through 1994) and a cross-sectional analysis (using other WCBs for comparison) of workers' compensation system performance.

Finally, the last chapter reports our perspectives on areas that might need additional examination by policymakers. We hope that the attention points raised will provide a stimulus for discussion of further improvements in the British Columbia system. They certainly are not meant to provide a blueprint for what those improvements should be. Such questions must be decided by the workers, employers, and citizens of British Columbia through their political process.

Chapter 2

GOVERNANCE UNDER THE WORKERS COMPENSATION ACT

Introduction

The original *Workers Compensation Act* took effect in British Columbia on January 1, 1917. Workers exchanged the right to sue their employers at common law for the “no-fault” right to compensation for personal injury arising out of and in the course of employment. Further, the *Act* established an Accident Fund to pay benefits for that purpose, funded by assessments against employers who were subject to the *Act*. The Workers’ Compensation Board (WCB) of British Columbia has administered the *Act* continuously since 1917 as an independent provincial agency. The structure of the WCB and the appellant procedures were significantly altered by Bill 27, passed in 1989 and implemented in 1991.

The WCB is charged with the responsibility to pay the benefits specified by the *Act* to injured workers, their dependants and survivors. The WCB also has the right to assess employers subject to the *Act* for the monies necessary to “meet all amounts payable from the accident fund during the year” and to “provide in each year capitalized reserves sufficient to meet the periodical payments of compensation accruing in future years in respect of all injuries which occur during the year.” Earnings of these reserves have been a very significant income supplement in recent years. Thus, the WCB does not administer a “pay as you go” system, but one that is intended to be fully funded and actuarially sound.

The WCB is the final arbiter on questions of both law and fact, notwithstanding the existence of an independent Workers’ Compensation Review Board (WCRB).

Section 96 of the *Act* specifies that:

The board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising under this Part, and the action or decision of the board on them is final and conclusive and is not open to question or review in any court,...

Bill 27 of 1989 established the Appeal Division of the WCB which hears both worker and employer appeals from WCRB decisions, employer appeals on assessments, and certain other matters. The decisions of the Appeal Division are subject to judicial review only on the grounds of “denial of natural justice” or WCB jurisdiction.

Before June 3, 1991 the Workers’ Compensation Board of British Columbia was governed by Commissioners, appointed by the Lieutenant Governor in Council. The *Workers Compensation Act* specified there were to be no more than five (5) Commissioners, with one of their number serving as Chairman. The duties of all Commissioners were considered to be full-time. The Commissioners served three functions at the WCB. They were the policymaking body, they were the final appeal authority, and the Chairman served as the chief executive officer of the WCB.

The governance structure of the WCB was substantially overhauled by Bill 27, which was enacted in 1989 and took effect on June 3, 1991. The legislation took its inspiration almost totally from the *Report and Recommendations to the Minister of Labour and Consumer Services* by the Advisory Committee on the Structures of the Workers’ Compensation System of British Columbia (the Munroe Report) of October 31, 1988 (*Workers’ Compensation Reporter*, Vol. 8, pp. 231 – 244). It recommended the replacement of the old system of Commissioners with a Board of Governors and creation of a new Appeal Division, headed by a Chief Appeal Commissioner. This amounted to a separation of the policymaking and appellate functions of the old Commissioners. Bill 27 amendments also created the new position of President and Chief Executive Officer to administer the day-to-day functions of the WCB. This meant that the administrative function of the old Commissioners was also split off and handled separately. This new WCB came into existence with the swearing-in of the new Board of Governors and Appeal Commissioners on June 3, 1991.

As described in more detail below, the Board of Governors was suspended by the Minister of Skills, Training and Labour in July of 1995 due to widespread perceptions of counter-productive interest group squabbling and ineffective decision-making. While there are various interpretations of this action, it re-

mains true that the stakeholder communities were deeply divided over certain legislative and policy issues and the governance of the WCB, and their differences could not be bridged, even by the most skilful leadership. At this point, the experiment that put representatives of workers and employers at the table to govern the WCB together must be regarded as a failure. It remains to be seen whether the Board of Governors will be reinstated at some point in the future. For the most part, this volume will describe the structure of the WCB as of July 1, 1995 and its functioning up to that point. We deal with the governance issues primarily in this chapter.

Organization within Provincial Government

The WCB is an independent provincial agency whose statutory authority is delegated from the Legislative Assembly and the Lieutenant Governor in Council. The Board is not dependent on the Provincial Government for its revenues, as these are raised by WCB assessment against employer payrolls throughout British Columbia and earnings on reserves for future benefit payments. The Ministry of Skills, Training and Labour exercises general oversight of the WCB and it is this Minister who transmits the Annual Report of the WCB to the Lieutenant Governor (See Figure 2.1). Until 1994, the WCB operated with very considerable independence from the Provincial Government, but that appears to have changed with the events of the past year or so.

While the Workers' Compensation Board plays the primary role in providing benefits to disabled workers in British Columbia, there are a number of other organizations that play important roles in the workers' compensation system as well. They will be briefly outlined here and described more fully below.

The decisions of officers of the WCB are subject to review by the Workers' Compensation Review Board (WCRB) in matters relating to workers. After considerable inter-institutional controversy, the findings of the WCRB were made enforceable by the Guadagni decision of the British Columbia Supreme Court in 1988. Prior to that time, it had been WCB policy to use its discretion under Section 96(2) of the *Act* to "reconsider" Review Board findings in light of WCB policy or findings of fact, thereby delaying or qualifying implementation of the WCRB's findings. While the final authority of the WCB is maintained in the Appeal Division, the agency is required to give immediate effect to WCRB findings now, subject to Section 96(2) of the *Act*. The Review Board and its role in the workers' compensation system will be fully discussed in Chapter 4 below.

There are also organizations created by the *Act* to facilitate access by workers and employers to its provisions (See Figure 2.1). The Workers' Advisers Office (WAO) employs some 40 people, with a budget of \$3.1 million in 1994, to assist workers or their dependants in bringing claims, including actually representing them before the WCB or WCRB if necessary. Similarly, the Employers' Advisers Office (EAO) has a staff of 17, and a 1994 budget of \$1.3 million, to perform advisory services on behalf of employers subject to the *Act*.

In addition, the Ombudsman of British Columbia is involved in oversight of the workers' compensation system, primarily through the request of injured workers for assistance. The Ombudsman is not permitted to become involved in an issue which is, or could be, subject to an appeal, so direct involvement with claimants is limited. The Ombudsman also conducted a substantial independent study of the workers' compensation system in 1987, which foreshadowed some of the changes to the *Act* that were subsequently enacted into law in Bill 27 in 1989. Each of these organizations will be more fully discussed in Chapter 4.

The Workers' Compensation Review Board, the Workers' Advisers Office and the Employers' Advisers Office all report administratively to the Ministry of Skills, Training and Labour (See Figure 2.1). Their budgets are approved by the Ministry before being invoiced to the WCB to be included in the WCB assessment rates. Thus, the employers of British Columbia bear the direct cost of the entire workers' compensation system and its administration. While the WCB raises the money to fund these allied operations, they exercise no influence over them in a policy sense. Policy guidance comes solely from the Ministry of Skills, Training and Labour.

The WCB administers the *Criminal Injury Compensation Act* in British Columbia, as well. This *Act* provides compensation for personal injury or death resulting from crimes within the province. Victims of criminal acts, or their dependants, are eligible for medical, loss of earnings, pain and suffering, and rehabilitation benefits of up to \$50,000.¹ These claims are administered within the Legal Services Division of the WCB and administrative costs are billed to the Ministry of the Attorney General. The claim costs are reimbursed by the Provincial and Federal governments, according to statute. During calendar year 1994, the Division allowed 3,438 claims and disallowed 1,499; administrative costs totalled \$5.6 million (including major expenses associated with centralizing staff in one location). In 1994, the WCB processed 26,204 payments for victims of criminal acts, totalling \$21.2 million.

¹ In 1995, the Criminal Injuries Act was amended to allow individuals to claim both workers' compensation and criminal injury benefits.

Recent Governance Controversy

In the fall of 1994, the opposition party in the Legislative Assembly released a report entitled *A Crisis in Leadership: The Workers' Compensation System in British Columbia*. It reflected the results of a series of hearings held around the province during the summer of 1994 by the BC Liberal Party. According to the report, a number of problem areas existed that had been developing at the WCB for some time, including deteriorating service levels, allegedly "runaway" administrative costs, and a growing unfunded liability. None of this was news to those familiar with the WCB. However, workers paid attention since it seemed to be saying that service for injured workers was declining. And employers reacted because it claimed that costs were spiralling out of control, which employers were more than ready to believe.

Further, this report broke on top of a wave of employer protest over the recently released Draft Ergonomics Regulations that were being vetted for public comment by the WCB in the fall of 1994. As described below, the Regulations Advisory Committee of the WCB Board of Governors had been working on the draft ergonomics regulations for two years. However, the public hearings in September of 1994 focussed attention on the implementation plans for 1995. This made the issue more immediate, especially for employers only marginally involved in safety and health issues. This included the very large group of employers who had been brought under WCB coverage for the first time January 1, 1994. Employer representatives on the Ergonomics Subcommittee, the Regulation Advisory Committee, the Governor's Committee for Regulation Review, and the Board of Governors all expressed reservations about the document.

To this mix was added the struggle over the appointment of a new President/CEO. For 15 months, The Chair of the WCB had also served as President/CEO since the dismissal of the original President/CEO in the summer of 1993. It has been alleged that some labour interests preferred this arrangement because of their confidence in Jim Dorsey. However, it created an unfortunate confusion in the two roles and a crushing personal burden for one person. When a potentially viable CEO candidate was finally found in the late fall of 1994, the Chair began looking for a way to secure labour support for his appointment.

It was decided to link the appointment of the new President/CEO to the reappointment of the Chief Appeal Commissioner, who was respected by labour, but not among employer groups. Her term was to expire in June of 1995, and it was reasoned that labour governors might be willing to accept the President/CEO candidate provided they could see some gain for labour in the situation. However, employers felt, and requested in writing, that the Chief Appeal Commissioner should be formally evaluated (as the previous President/CEO had

been). They felt strongly that the attempt to link the Chief Appeal Commissioner's re-appointment with the President/CEO appointment was improper. The result was a tie vote at the Board of Governors, which was broken by the Chair voting (for the first time in four years) in favour of the linked appointments. Later that week, organized employer groups began to call for WCB Chair Dorsey's resignation. Privately, they also wrote to the Minister urging that Mr. Dorsey not be reappointed when his term as Chair expired in April, 1995.

Two weeks later, the Liberal Party announced that they were filing a Freedom of Information request for the Chief Appeal Commissioner's "expense records" based on an insider tip. When the fact of a payment in 1991 of some \$88,000 for "moving and auxiliary costs" (even though she lived in West Vancouver at the time of her commencing employment) to the Chief Appeal Commissioner reached the Minister, he demanded an explanation from the Chair of the WCB. This prompted the resignation of the Chair on December 16, 1994.

At the same time, the Minister announced that he would appoint someone to look into the WCB and try to determine what was wrong with the governance structure. In April of 1995, the Ministry released a report by consultants Patrick O'Callaghan and Judi Korbin on the governance of the WCB. They reported a "high level of frustration" with the WCB governance structure on the part of all parties interviewed. Accordingly, they presented a series of recommendations designed to reduce the contentiousness of interest group representation, improve the cohesiveness of the Board of Governors, and reduce the burden on governors generated by the pace of change and the fractious personal relationships. Their analysis of the governance problem at the WCB included the following statement:

As a result of a number of circumstances,...,the Board has not had the opportunity to operate in a fashion that is consistent with the original intention of either the Munroe Report or the subsequent 1989 legislation. With the implementation of the recommendations made later in this report, we believe the current governance structure will at least have the opportunity to operate effectively. *However, without the goodwill and co-operation of all stakeholders this governance system will not work.*
[emphasis in original] *Report and Recommendations*, p. 6.

The report provided an extensive analysis of the factors that inhibited the Board of Governor's effectiveness, including the attempted politicization of the two key management roles, President/CEO and Chief Appeal Commissioner. However, its major thrust was to highlight the lack of Board cohesiveness. O'Callaghan and Korbin specifically cited Bylaw No. 2 — Statement of Roles and

Responsibilities of the Voting Governors (October 7, 1991) which specified that the “representative governors’ primary duty and responsibility is to represent the interests of their constituencies”. According to O’Callaghan/Korbin, “This definition of Board responsibility creates disunity and weakens the Board’s ability to act cohesively.” An integrated, comprehensive set of recommendations was tabled to counter these perceived failings of the governance structure.

As the Spring of 1995 progressed, relations between the Ministry and the Board of Governors of the WCB steadily deteriorated. Labour interests were particularly outraged over the O’Callaghan/Korbin report and the expectation by the Ministry that they would embrace it. Finally, late in June, a new WCB Chair (Lee Doney) was appointed for an interim term of six months. The charge to the Board of Governors and the new Chair was “... to address recommendations contained in the report on WCB governance completed by Patrick O’Callaghan and Judi Korbin in April...” (Ministry Press Release, June 22, 1995). However, organized labour pronounced the O’Callaghan/Korbin report “dead on arrival”.

Meanwhile, the WCB and its bargaining unit representative, the Compensation Employees Union (CEU) were rattling sabres at each other over the unresolved issues of the collective bargaining agreement. The previous 3-year agreement had expired on March 31 and both sides were growing increasingly frustrated at their inability to reach an agreement. When the CEU scheduled a strike vote for the week of June 5 — 9, it seemed very likely that some type of job action or strike would in fact ensue. The strike vote was 85 percent positive and a strike notice was served on the WCB on June 15. On June 16, the WCB tabled their final offer and notified the union that they intended to request a final offer vote of the membership, as specified under the *Labour Relations Act*. In addition, on the same day, the WCB served notice to the union of their intent to lockout. Then, at the last minute, the WCB agreed to send top management representatives to a week of intensive negotiations at the end of June. A settlement was subsequently reached, and the CEU announced early in July that its membership had ratified the contract with a positive vote of 96 percent.

However, employers launched an all-out attack on the WCB — CEU agreement when details were leaked to the press. Employer governors made it clear that they were prepared to vote the contract down. At a time when employers were already very agitated about WCB costs, service shortcomings, and “administrative failures”, the rumours of lifetime employment guarantees and further additions to the time-off provisions of the contract unleashed a storm of protest. Suddenly, on July 11, President and CEO Dale Parker announced that he had tendered his resignation to the Minister over the weekend. His letter explained:

...the longer term strategy is in jeopardy due to external attempts to intervene in operational matters that rightfully rest

with management. While this is a Crown agency and by its very nature draws considerable public scrutiny, those with self interests have orchestrated an unrelenting attack on the organization. Unfortunately the Board of Governors is not sufficiently united in purpose to provide effective governance nor voice support for its management team.

This was immediately followed by the introduction of Bill 56, the “Workers’ Compensation Amendment Act,” which passed the Legislative Assembly later that same week.

According to a statement issued by Minister of Skills, Training and Labour, Dan Miller, “Recent events have brought into question the ability of the Board of Governors to put the interests of injured workers and their families before the interest of the individual governors and their sectors.” Bill 56 authorized the cabinet to appoint “one or more persons as public administrators to discharge the powers, duties and functions of the governors.” The Panel of Administrators was, “to provide an opportunity to review the system of WCB governance required for the longer term stability and functionality of the board of governors.” They are scheduled to serve for one year, but this could be extended by the Lieutenant Governor in Council if required. (Ministry Press Release, July 10, 1995)

At this writing, the eventual outcome of the struggle over WCB governance is unknown. A Panel of Administrators headed by Lee Doney has been named and charged with implementing the O’Callaghan/Korbin report. The President/CEO has withdrawn his resignation at the request of the Panel of Administrators and the Minister. The CEU contract has been ratified by the Panel of Administrators. Everyone is taking a “wait and see” attitude.

Policy Record of the Board of Governors

While no one can be sure of the ultimate outcome of the deliberations over the governance of the WCB, it is worth reviewing the accomplishments of the Board of Governors (BOG) during their tenure of slightly over four years (June 3, 1991 through July 10, 1995). This is particularly important since most of the rest of the report concerns structure or performance measures, which does not provide a convenient venue to review policy developments. Clearly, it is in the policy arena that the Board of Governors has left its mark. Nearly every legislative enactment during the four years originated at the WCB Board of Governors.

During 1991 (some governors were appointed in 1990), the Board of Governors met 19 times. The first year was occupied with organization of the Board, adoption of by-laws, making appointments, and creation of committees. In ad-

dition, the Board of Governors revived the *Workers' Compensation Reporter* to serve as a communication channel to the workers' compensation community, assigned Medical Review Panel reporting to the Board of Governors, and provided requisite guidance and supervision to the operating divisions. They also commissioned the first Administrative Inventory of any Canadian workers' compensation system to provide a baseline measurement of WCB performance, thereby committing themselves to public measurement and accountability in a most tangible way.²

More importantly, the Board of Governors and most prominently, its chairperson Jim Dorsey, introduced a new climate of openness and accountability at the WCB. They talked incessantly about "stakeholder" interests, where stakeholders included primarily workers and employers, but also service providers and other members of the workers' compensation community. In fact, the actions of the WCB effectively presaged the subsequent policy change represented by the Freedom of Information and Protection of Privacy Act (FIPPA) which took effect in 1993. They also created a "fall tour" which took the top executives of the WCB out into the communities around the province to put a more "human face" on the WCB for workers and employers alike. This was a major cultural change for an organization that had developed a significant fortress mentality through its bureaucratic traditions.

It is also noteworthy that the WCB, under Jim Dorsey's leadership, made a real attempt to focus public attention on the *prevention* of work-related accidents and illnesses. The fact that the WCB had responsibility for prevention, compensation, and rehabilitation within one organization created a particular potential for synergy. Mr. Dorsey realized this early on, and worked tirelessly to link these previously separate missions.

During 1992, the Board of Governors met 19 times and launched a comprehensive, public regulation review and development process that continues to this day. An enormously ambitious agenda was adopted in order to reconsider, with full public input and disclosure, *all regulations promulgated by the WCB*. Subcommittees were planned for agriculture, first aid, occupational hygiene, ergonomics, fishing, equipment safety, silviculture, construction, electrical systems, underground workings and blasting, underwater diving, marine operations, land transportation and traffic control, forestry operations, aircraft operations, wood products operations, petroleum and natural gas, and firefighting. A Regulation Advisory Committee (RAC) was appointed to pursue these subjects with a Secretariat to provide support services. This massive effort was chaired by Board of Governors Chair Jim Dorsey himself.

² Hunt, Barth, and Leahy (1991).

The Board of Governors also completed a review of published policy on vocational rehabilitation at the WCB during 1992. They established the Industrial Disease Standing Committee, chaired by Mr. Dorsey, and updated and revised the medical aid policies in place at the WCB. They implemented a controversial policy change on retroactive adjudication, giving effect to an Appeal Division decision from 1991. In the assessments area, they adopted a new policy on transfer of ERA credits to successor employers, abolished the separate Silicosis Fund, and opened up the assessment rate process through an expanded and enhanced public consultation process. They also adopted the Governor's Financial Standing Committee, restructured the compensation system for senior management at the WCB, and approved a 3-year contract with the Compensation Employees Union. According to the Annual Report, all but three matters considered by the Board of Governors during 1992 were settled unanimously, and the Chair was not required to vote.

During 1993, the Board of Governors met 17 times. They adopted regulations for Agricultural Operations, Occupational First Aid, and for Protection of Workers Against Violence. They adopted new permissible concentration levels for 16 airborne substances and extended OSH regulations to aquaculture. The Board of Governors oversaw the development of a new, streamlined organizational structure and they went through the agonizing process of performance evaluation and termination of the President/CEO. After the termination, Jim Dorsey, Board of Governors Chair, assumed the additional office of President/CEO effective August 3, 1993.

Under the terms of Bill 63, which extended mandatory coverage to all employers in the province, the Board of Governors was given authority to exempt individual workers and employers from the Workers' Compensation Act. They were also made responsible for issuing regulations under the Workplace Act, which governed safety and health matters.

There were also a number of significant changes in financial matters during 1993. The Board of Governors decided to capitalize expected long-term Vocational Rehabilitation costs resulting in a one-time charge of \$133 million. Implementation of statutory revisions requiring continued spousal death benefits after remarriage resulted in another one-time charge of \$108 million to provide for these benefits. The Board adopted revised mortality tables, reflecting the increasing longevity of the population, which resulted in another increase of \$67 million in future estimated benefit payments. At the same time, the Board adopted a 3 percent discount rate for valuing future benefit payments, up from the old rate of 2.375 percent.³ This latter adjustment resulted in a one-time reduction of \$390 million in estimated actuarial liabilities. On balance, these changes in accounting for real obligations and actuarial assumptions resulted in a positive variance of \$82 million for the Accident Fund in 1993.

The Board of Governors in 1993 also established a Vocational Rehabilitation Services Advisory Council, approved the Rehabilitation Centre's plan to pursue accreditation, and adopted a new policy on disfigurement. They promulgated new policies on disclosure of assessment classifications and simplified payroll estimates for assessments. During 1993, there were three occasions when the public interest governors had to cast the deciding votes; the Chair did not have to vote in 1993.

The Board of Governors met 20 times in 1994. They adopted a new Occupational Disease policy (Chapter 4 of the *Rehabilitation Services and Claims Manual*), reflecting the work of the Industrial Disease Standing Committee. They implemented the universal coverage provision of Bill 63 and promulgated new Fishing Operations regulations. They also adopted new policies to implement Occupational First Aid regulations and promulgated a new Occupational Disease Recognition policy. The Governor's Committee on Regulation Review released draft regulations on fall protection, noise control and hearing conservation. In addition, final subcommittee reports were received on electrical safety, construction safety, occupational hygiene, wood products manufacturing, forestry operations, land transportation and traffic control, blasting and underground workings, firefighting and emergency rescue, and underwater diving.

Most significantly of all, the draft ergonomics regulations went to public hearings in September 1994, eliciting more than 600 submissions from the public and an angry outcry from employer groups. The Chair reported that all but five decisions were unanimous during 1994. As related earlier, one of these was on the motion to tie the appointment of the new President/CEO to the reappointment of the Chief Appeal Commissioner. The Chair, for the first time, was forced to vote to break the tie on this issue.

Jim Dorsey, in his capacity as President/CEO wrote in the 1993 Annual Report:

Ultimately, we must anticipate and meet the needs of the community, for it is at the shop floor and street level that the Board will and must be evaluated on how well its performance and cost serve its customers.... What we have not yet achieved is a clear focus on demonstrable outcomes rather than process or activity. This is a challenge for 1994. (1993 WCB Annual Report, pp. 10 – 11.)

The rest of this report will show that, ultimately, that challenge was not met.

³ The discount rate reflects the expected real rate of return on investments, that is, the extent to which the earnings on reserves exceeds the rate of increase of prices (hence benefit payments indexed to the price index).

Current Initiatives

While the summer of 1995 was tumultuous at the top of the WCB organization, these events should not obscure the very tangible feeling of progress that characterizes top management thinking. The spirit of change at the WCB is still alive, despite the reverses of the past year. While there has been little or no demonstratable improvement in system performance since 1991, the new management team is confident that their initiatives will turn the situation around. Some of the more interesting developments of the last year will be discussed briefly here, with additional detail in specific chapters to follow.

Service Delivery Strategy Project

In the Compensation Services Division, a broad change initiative is being developed and implemented under the Service Delivery Strategy (SDS) Project. The SDS project is designed to improve the quality, value, and level of service provided to clients of the WCB. It includes a business process reengineering initiative, an electronic claim file (e-file) plan, changes in medical payment processing and reporting, an initiative to simplify and expedite the reporting process for injured workers (referred to as Form 14, since it combines old Forms 6 and 8), a new performance management system, and the designation of one of the SDLs (Coquitlam) as a model office for the trial and evaluation of new work methods and technologies.

One of the first changes to be implemented will be in the health care benefit payment system. This proposal to use an existing telecommunication and payment system (Provincial Medical Service Plan) is expected to reduce the payment delay to practitioners from 80 days to 15 days. It will result in substantial savings in WCB interest payments that have been required because of the delayed payments. It is projected to result in an administrative cost reduction of \$2.3 million per year.

The electronic claim file (e-file) project is expected to reduce delays in issuance of initial WCB payment by over 11 days and result in administrative cost savings of \$8 million per year. At the same time it will improve timeliness of WCB officer decisions, as they will not have to wait for the arrival of a physical file from some other location before responding to claimant inquiries. Communication between Board officers should also be enhanced since they will be able to view the same file simultaneously through electronic technology. This should ultimately support earlier intervention and more effective return-to-work efforts by ending the periods of benign neglect that now characterize WCB claims management activities. The "proof of concept" for the (e-file) and consolidated Form 14 was just getting underway in the summer of 1995.

New Directions Project

The New Directions Project in the Assessment Department is another promising new initiative. This effort, initiated by the Vice-President Finance/Information Services in March 1994 has been a no-holds-barred, participatory analysis of the organization and its effectiveness. An initial strategic evaluation report was issued in June of 1994 that enumerated a large number of potential improvements that could be made to improve service to clients and reduce WCB costs.

After internal review and discussion, a business process reengineering exercise was launched in October 1994 to document and evaluate the specific opportunities for system improvements identified in the initial phase. A New Directions Team of 15 individuals from the Assessment Department, including both union representatives and management people, was formed to work with internal (ISD) and external (Coopers and Lybrand) consultants to conduct a detailed task analysis of all Department functions. Business process reviews were accomplished for registrations, account maintenance, payments and penalties, and audit functions. Collections was not completed, as this review process was temporarily suspended in late spring of 1995 when the union withdrew their participation as a result of the collective bargaining impasse.

The New Directions Team identified a great deal of effort that was going into non-productive activities. Through streamlining document handling, improved communications, better systems support, and reorganization the New Directions Team believes that very substantial gains in service quality and productivity can be achieved. These changes will also break down some of the internal functional barriers and provide the opportunity for job enrichment throughout the Department. Some of these initiatives are expected to be approved for implementation before the end of 1995.

There is also a comprehensive new strategic planning effort that was initiated for 1995. All administrative units were required to prepare business plans that restated the mission, provided an overview of the department or unit, and analysed the external environment. The internal business environment was also analysed, enumerating strengths and weaknesses and relating these to critical success factors. Finally, the business plan for 1995 was presented with objectives, activities and projected outcomes listed. This activity is being repeated for 1996 under the leadership of the President/CEO with the intent to circulate a strategic plan for public comment later in the year.

It would be wrong to say that there have not been disappointments at the WCB in the last few years. Some of them have been extremely costly, both in resources and in terms of people's spirits. Various shortcomings have plagued the realization of the goals of the "new" WCB. Those who said it was better to

keep your head down and stay out of sight have had a lot to talk about in the last four years. But the WCB has a critically important public policy mission to perform, day by day and case by case. It is this mission that sustains and rejuvenates the spirit of change at the WCB. It is commitment to this mission that will guide the WCB as it struggles toward an uncertain future.

As adopted by the Board of Governors in 1991:

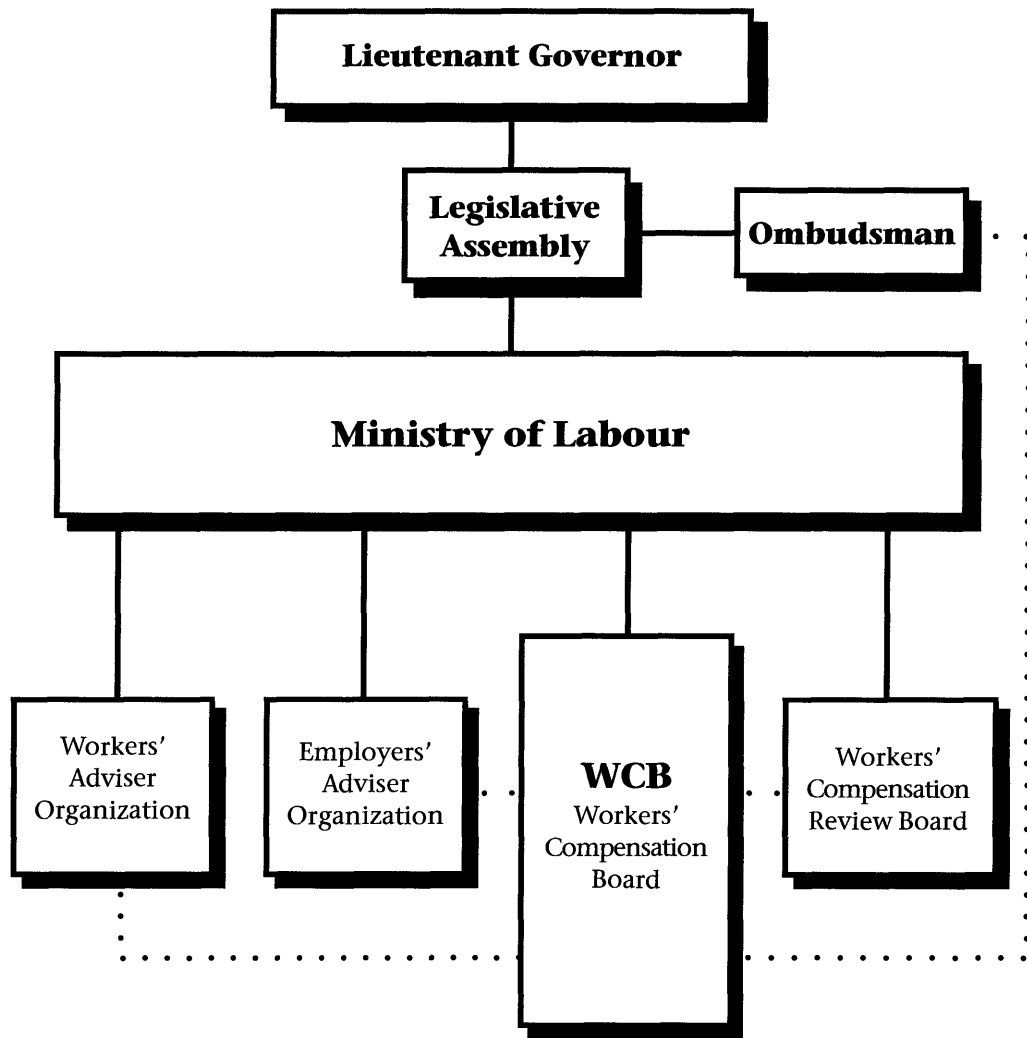
WCB Mission Statement

Workplace safety and health is our challenge.

Quality rehabilitation and fair compensation is our commitment.

World leadership is our goal.

Figure 2.1 — Organization of Workers' Compensation System in British Columbia, Canada



———— Administrative Reporting
..... Cooperation/Interface

Chapter 3

ORGANIZATION, FUNCTION AND STAFFING OF THE WCB

Overview of the WCB

In this chapter, the structure of the WCB will be the primary topic. First, we will provide an overview of WCB structure, and then focus in detail on the Compensation Services Division. Third, we will turn to a description of the claims administration process followed by a description of some new initiatives in the Compensation Services Division. Performance issues will be discussed in the following chapters, especially in Chapter 8, *System Outcomes*. It is the administrative structure in place on July 1, 1995 that will be described here, with summary data from calendar year or year-end 1994 to indicate relative magnitudes.

There will be occasional reference to the administrative structure previous to June 1991, as necessary to provide a proper context. It is too early to assess whether the recent changes in the governance of the WCB, described in the previous chapter, will have any specific impact on the structure or functions of the WCB. Panel of Administrations Chair Lee Doney has stated, "Replacing the Board of Governors may at first seem cataclysmic, but I'm going to try hard to ensure it doesn't affect the Board in its day-to-day business and that we keep moving forward productively." (Internal WCB memo.)

The Board of Governors¹

As shown in Figure 3.1, the Board of Governors is the highest authority of the WCB and Section 82 of the Act specifies they “shall approve and superintend the policies and direction of the board, ...” The 13 voting members on the Board of Governors of the WCB are appointed by the Lieutenant Governor in Council for terms of up to 6 years. The Board is presided over by a voting Chair, with five of the members designated as “representative of workers,” five designated as “representative of employers” and two additional voting governors who are “representative of the public interest.” Collectively, these 12 are referred to as “representational Governors.” In addition, the President/CEO of the WCB and the Chief Appeal Commissioner are non-voting members of the Board of Governors by virtue of their office. A majority of the voting members in office constitutes a quorum of the Board. The Board issues its policy pronouncements in “Decisions” which are published in the *Workers’ Compensation Reporter*, a publication of the WCB, as well as through amendment of the various manuals which have been adopted by the Governors as their stated policy.

The Board meets at the call of the Chair and all costs of the Board of Governors are paid by the Accident Fund. The voting members of the Board of Governors are part-time office holders who are paid per diem fees set by the Lieutenant Governor in Council in compensation for their official WCB duties. In addition to the monthly Board of Governor meetings, Governors serve on standing committees (e.g., Financial Standing Committee and Occupational Disease Standing Committee) and several *ad hoc* committees of the Board. The Board of Governors met 20 times, including committee meetings, during 1994 and a total cost of \$802,000 was incurred in salaries, per diems, travel expenses and other costs.²

¹ As described in Chapter 2, the Board of Governors was suspended on July 12, 1995 under the terms of Bill 56. Presumably this is a temporary measure.

² This figure includes the full-time salary of the Chair of the Board who also served as President/CEO for most of 1994. Representational Governors received a total of \$141,120 in per diem payments, about \$12,000 each.

Appeal Division

The Appeal Division was established by Bill 27 of 1989. The Division consists of a Chief Appeal Commissioner appointed by the Board of Governors and an unspecified number of Appeal Commissioners appointed by the Chief Appeal Commissioner, selected in accordance with policies established by the Board of Governors. The Chief Appeal Commissioner is paid a salary and accorded status commensurate with that of the President/CEO of the WCB. In 1994, the salary was \$158,000. Appeal Commissioners are appointed expressly as representative of workers, representative of employers, or non-representational members. One of the Appeal Commissioners is appointed as Registrar, with the authority to grant extensions of time for appeals, or for decisions to be rendered, and to act for the Chief Appeal Commissioner in her absence or in a case where she has a possible or actual conflict of interest or appearance of bias.³

The Appeal Division has authority to hear appeals from Workers' Compensation Review Board findings by employers or workers (or their dependants), referrals of Review Board findings from the President/CEO of the WCB, reconsideration of previous Appeal Division or Commissioners' decisions, occupational safety and health penalty appeals, appeals of assessment matters, and appeals of decisions under the Criminal Injury Compensation Act.⁴ In addition, the Board of Governors of the WCB has designated the Appeal Division to handle a number of other responsibilities relating to assessment disputes, charging of claim costs, first aid penalties, and the Board's obligation to issue certificates to the Courts under Section 11 of the Act.

As of the end of 1994, there were 17 Appeal Commissioners in addition to the Chief Appeal Commissioner. This staffing included 9 full time, non representational Appeal Commissioners, 2 part time, non representational Appeal Commissioners, 4 full time, representational Appeal Commissioners (2 representing worker interests and 2 representing employer interests), and 2 part time, representational Appeal Commissioners (one each representing workers and employers). There is a support staff of 22 persons. Appeal Commissioners are paid \$79,000 to \$82,000 per annum for full-time and \$335 to \$385 per day for part time service. The total cost of the Appeal Division in 1994 was \$2,858,000. The Appeal Division's role is fully described in Chapter 4.

³ Appeal Division Decision No. 2, May 29, 1991, *Workers' Compensation Reporter*, Vol. 7, pp. 53-55.

⁴ Appeal Division Decision No. 1, May 29, 1991, *Workers' Compensation Reporter*, Vol. 7, pp. 33-52.

Medical Review Panels

The Medical Review Panels (MRP) resolve appeals in claims with *bona fide* medical disputes, either resulting from adjudication decisions of the WCB, or findings of the Workers' Compensation Review Board, or the Appeal Division. An MRP is the final arbiter on medical issues that may be referred to them. Panels conduct independent appraisals of the medical facts in WCB cases that are disputed. Each panel is made up of three community-based medical specialists, independent of the WCB. While the MRP process is involved in relatively few claims, it plays an important role in the dispute resolution process. There are 16 part-time Panel Chairs appointed by order-in-council, with a total of 208 medical specialists eligible to serve on panels during 1994. The total administrative cost of the Medical Review Panels during 1994 was \$1,905,000. The Medical Review Panels will also be described in more detail in Chapter 4.

Administrative Structure of the WCB

The President/CEO is charged with responsibility for the administration of the WCB. This office was created by Bill 27 in 1989 as part of the overall reform package. The intent was to separate the administrative duties from the adjudicative and policy-making duties that had been borne by the Commissioners under the previous structure. The President/CEO is paid a salary of \$170,000 annually and serves at the pleasure of the Board of Governors. The WCB administers the Act from its head offices in Richmond. There are also nine Area Offices located around the province (Courtenay, Cranbrook, Kamloops, Nanaimo, Nelson, Prince George, Terrace, Vernon, and Victoria), and several work centres.

Figure 3.1 shows the overall organizational structure of the WCB. There are three main operational divisions (Prevention, Compensation Services, and Finance/Information Services), plus a number of special purpose divisions and departments, most of which report directly to the President. Each of the Divisions is headed by a Vice President. The next level is generally the department, headed by a Director.

Compensation Services Division

The Compensation Services Division, consisting of six departments, is the largest division of the WCB. Compensation Services has responsibility for administering wage-loss, pension and health care benefits to injured and occupationally diseased workers. Thus, Compensation Services adjudicates

claims for compensation by disabled workers, including the responsibility for determining the right to compensation, the benefits due and whether vocational rehabilitation services could usefully be employed to return a disabled worker to gainful employment.

The adjudication and claims management function of the Compensation Services Division is organized into three Client Service Departments according to location. Lower mainland claims are adjudicated in seven Service Delivery Locations, or adjudication units, mostly located at the WCB headquarters in Richmond. Claims for the rest of the province are adjudicated in nine Area Offices located around the province. There is also a Central Operations group that adjudicates permanent pension claims, occupational disease claims, health care benefit claims and provides support services to the Division.

The Medical Services Department within Compensation Services advises Claims Adjudicators and Vocational Rehabilitation Consultants on medical matters relative to claims. It is responsible for the evaluation of permanent functional impairment and the supervision of the physical rehabilitation of many injured workers. The Vocational Rehabilitation Department is charged with responsibility for assisting injured workers in returning to work and determining future earnings losses for purposes of setting permanent disability pensions.

The Compensation Services Division had a total staff complement of 1,041 full time equivalents (fte) at the end of 1994, and administrative costs totalled \$65,278,000 in 1994. The Compensation Services Division will be described in more detail in a separate section below.

Finance/Information Services Division

The Finance/Information Services Division is responsible for financing the WCB through its Assessment Department and the management of the Board's substantial investments by the Treasurer. Financial Services also includes the offices of the Controller, the Actuary, and Statistics. The Actuary and the Statistics Department work closely with the Assessment Department in analysing the experience of British Columbia's employers, both individually and collectively, and in setting assessment rates that reflect their experience. The Controller's Department maintains the Board's general ledger and accounts payable systems. The Department is also in charge of purchasing, central stores, and processing the revenue receipts of the WCB. In addition, the Controller's Department is responsible for the administration and payment of long-term disability pensions and survivor benefits to WCB claimants. The Finance Department of the Division had a staff complement of 233 fte's at the end of 1994.

This Division also includes three Information Services (ISD) departments, Business Development and Planning, Development Services and Computing Services as shown on Figure 3.1. These departments are responsible for the information and data processing needs of the WCB and reflect a reorganization that occurred in early 1994. This reorganization was designed to transform the Information Services Division into a customer driven, quality focussed, cost effective "business within a business."

The Business Development and Planning Department is leading the transition to the new department model, while Development Services develops, provides, and supports the business systems and information needs for all internal WCB clients. Technology Services provides hardware, network, and systems support. The WCB is experiencing the same difficulties as most other large organizations in keeping up with a rapidly changing world of information needs and capabilities. The number of personal computers grew 68 percent between 1992 and 1994, while the utilization of the mainframe increased by 70 percent over the same period. ISD tabulates a total of 165 business systems that were being supported by their staff complement of 216 fte's as of the end of 1994.

Due to the budget stringencies of the last few years, the ISD departments are feeling increasingly challenged from within, while at the same time they are being required to face the possibility of competition from without. During 1995, ISD is providing monthly "billing" to internal clients to sensitize them to the magnitude of resources they are consuming, and to remind ISD of the customer-client relationship. There is a long-term plan to implement this system in fact, and require ISD to compete with external providers for WCB information system business.

There were a total of 450 fte employees in the Finance/Information Services Division at the end of 1994, with an administrative budget of \$24,099,000 for Information Services and \$14,946,000 for Financial Services in 1994. The Assessment Department from this division is reviewed in detail in Chapter 7.

Prevention Division

The WCB also administers the occupational safety and health program in British Columbia.⁵ The Prevention Division of the WCB administers a program of standards setting, enforcement, consultation, and education throughout the province. During 1994, the Prevention Division conducted 42,940 workplace inspections, wrote 60,029 compliance orders, and assessed 429 penalties, worth a total of \$2,148,500. The Division also conducted 761 program audits or reviews, 318 accident investigations, and 178 claims investigations during 1994. The Division maintains an extensive worker and employer safety education program, with 4,467 educational presentations made by WCB safety, hygiene, and safety and health officers during 1994. At the end of 1994, the Prevention Division of the WCB had a staff complement of 369 fte employees and the 1994 administrative budget (net of penalty collections) was \$29,412,000. The Prevention Division will be the subject of a separate administrative inventory planned for 1996.⁶

Human Resources Department

Figure 3.1 also shows the Human Resources Department (68 employees). The Department consists of seven separate service centres, including four line operations areas and three central teams of specialists. This department was decentralized in August, 1993 to put the human resource services out in the operating divisions. For HR Department staff, this amounted to converting from a specialist focus to a generalist focus with a specific internal client, in other words a more "client oriented" approach.

Currently teams of human resource generalists in each of the operations service centres provide labour relations, staffing, organizational effectiveness and compensation and benefits services to their respective line operations areas. This is reflected in the organization chart, with four Human Resource Operations Managers reporting to the Director of Labour Relations. There is also a centralized Compensation and Benefits Department to perform these Board wide activities. The Director of Labour Relations is charged with negotiating on behalf of the WCB with the Compensation Employees Union (CEU) and providing overall guidance and support in grievance arbitration and other labour relations matters. The Human Resources Department had an administrative budget of \$11,136,000 in 1994.

⁵ There are now four WCBs in Canada with this organization. Quebec and British Columbia were the first two. New Brunswick and the Yukon have more recently adopted this structure.

⁶ Much like this volume, it will be an update of Rest and Ashford (1992).

Legal Services Department

The General Counsel/Secretary to the Board directs the Legal Services Department (37 employees), as well as the Criminal Injury Compensation Department and the Freedom of Information and Protection of Privacy (FIPP) office. The FIPP office was established in 1993 as a result of the passage of the *Freedom of Information and Protection of Privacy Act* in British Columbia. The FIPP office responded to 352 requests for information during 1994. This section represents the WCB in legal matters, although not in claimant appeals, since this would result in WCB attorneys representing the WCB before the Appeals Division of the WCB. The legal staff is engaged in substantial personal injury litigation and third party actions as well as representing the WCB during judicial review of the Act or its Administration. Recoveries from these actions typically yield \$4 – \$5 million per year. The Criminal Injury Compensation Program is administered by the WCB, but funded by the province through the B.C. Office of the Attorney General. Legal services' administrative budget in 1994 was \$2,952,000.

Rehabilitation Services

The Rehabilitation Services department includes the Rehabilitation Centre, the Residence attached to the Centre, and the X-Ray Department, plus the recoverable revenue portion of the Psychology Department. The expenditure level of these units in 1994 was \$21.1 million. The Rehabilitation Centre is a world-class, full service rehabilitation facility that provides nine major clinical programs. These include the hand program, amputee program, head injury program, back evaluation & education program, work conditioning program, occupational rehabilitation program, return to work program, functional evaluation unit, and medical rehabilitation program. The Residence is a 195 room dorm-style unit that accommodates clients of the Rehabilitation Centre during their course of treatment.

Internal Audit and Evaluation

The WCB maintains an Internal Audit and Evaluation Department which reports directly to the President. The unit has 17 employees and maintains a regular schedule of audit and evaluation activity, with units scheduled for audits according to a long-term plan. During 1994, the Department completed 31 audits and eight evaluations. A major evaluation effort went into the Vocational Rehabilitation Interventions Evaluation Study, which was a review of outcomes in back injury claims at the WCB. (See Chapter 6) Currently there is an evalua-

tion study of the WCB experience rating program underway with completion scheduled for the end of 1995.

Other Departments

Figure 3.1 includes several other departments that report directly to the President/CEO. These include Community Relations, Policy & Research, Corporate Planning, Psychology, and Facilities. The Facilities Department operates the physical plant of the WCB and ensures a safe environment in which WCB employees can serve their clients. The department also provides corporate mail service and maintains the vehicle fleet. The Department spent \$14.0 million in 1994 and had a staff complement of 75 at the end of the year. The Psychology Department with 18 staff provides diagnostic services, education, and consultation primarily to rehabilitation clients at the WCB.

Community Relations, with a complement of 33 employees and a budget of \$3.8 million in 1994, provides both the strategy and the products for the WCB to use to communicate with its stakeholders. The department consists of three units, public affairs, printing, and editorial and design. Products include films and posters, newsletters and brochures, and the annual report of the WCB. Corporate Planning is a 2-person operation that supports the corporate business planning efforts for the WCB.

The Policy and Research Department exists to inform WCB management decisions. It was developed in late 1993 to analyse policy initiatives for the Senior Executive Policy Committee, essentially the top management of the WCB. The department is also responsible for maintaining the policy manuals for all the divisions. It has a matrix management structure which includes a Senior Policy Analyst in each of the three operating divisions. Policy and Research had a staff complement of eight and a budget of \$704,000 in 1994.

This completes the overview of the WCB structure. It should be noted that other administrative inventories have covered portions of this structure in more detail. These included the administrative inventory of the Prevention Division, *Occupational Safety and Health in British Columbia: An Administrative Inventory*, done by Rest and Ashford in 1992. There was also an administrative inventory of medical and rehabilitation programs, *Medical and Rehabilitation Programs in Workers' Compensation: An Administrative Inventory in British Columbia*, by Fulton and Atkinson in 1993 which covered the Medical Services Department, the Rehabilitation Centre and the Psychology Department. There have been similar studies of the Medical Review Panel function (the Jenkins Report) and the Legal Services Department at the WCB (the Hildebrandt Report).

The particular focus of this administrative inventory is on the basic adjudication and management of claims, settling the disputes that arise over those claims, the vocational rehabilitation of injured workers, and raising the money to fund WCB operations. Given this specialization, we defer to our colleagues and their expertise in the other areas of WCB performance and proceed with our special concentration by providing a detailed description of the organization and function of the Compensation Services Division.

Compensation Services Division Organization and Function

As indicated earlier, the Compensation Services Division is the largest division within the WCB. A primary focus of this report is to describe the operation of this division. Figure 3.2 shows that it is organized into five operational departments plus some divisional support services.

Claims Administration

The direct administration of claims is assigned, according to the location of the claimant's employer and/or the nature and severity of the disability. The Health Care Benefits Department administers the payment of medical bills for all WCB claimants (about 50 employees). The Disability Awards Department adjudicates and administers all fatal and permanent disability claims (about 70 employees). Industrial disease claims are adjudicated in the Occupational Disease Service (ODS) Unit (about 60 employees). The Claims Registration (CRT) department maintains central clerical support services, including sorting the incoming mail, assigning claim numbers, routing the file to the appropriate Service Delivery Location, etc. (about 25 employees).

Adjudication of temporary disability claims is divided between Service Delivery Locations (SDL) located in the Area Offices (about 318 employees) and Service Delivery Locations in the Lower Mainland (Richmond) office (about 275 employees) according to the location of the employee or the employer respectively. Table 3.1 shows the number of new claims registered and first paid by SDL. Before the reorganization, which primarily impacted the lower mainland offices, temporary disability claims were randomly assigned to one of five adjudication units, all located in the Richmond head office.⁷ This system led to an imbalance of workloads between adjudication units and was said to foster an impression of bureaucracy among clients.

⁷ This was after the simplest claims (Unit 9) and the most complex claims (Special Claims Unit) were separated from the main claim flow. See Hunt, Barth, and Leahy (1991), Chapter 3.

In addition, the reorganization to a geographic basis permits an increased familiarity with local employers and, at least potentially, more synergy with other parts of the WCB, especially Prevention and Assessments. One of the SDL's, Abbotsford, was actually physically relocated to the community which it serves in 1995. The staffing of a typical SDL is shown in Figure 3.3. About 40 to 45 employees work in such a claims unit and they will process about 15,000 new wage-loss claims in a year plus readjudicate another 1,500 continuing claims, when new issues arise.

Claims for temporary disability due to accident (i.e. not occupational disease) occurring outside the lower mainland geographic area are adjudicated and administered by the Area Office appropriate to the physical location of the claimant's residence. Figure 3.4 shows the rough geographical split between the area offices. Staffing in the Area Offices varies according to the claim load, with the largest being similar to that for lower mainland SDLs and the smallest being about one-third that size.

The lower mainland SDLs used to be organized under a matrix management system that divided administrative responsibility for the individuals who worked in the claim units. However, in 1993, the reorganized (on geographical lines) SDLs were also adjusted internally to provide an integrated team approach with SDL management responsible for all services within a service delivery location. After the reorganization in November 1993, a crisis developed in claims adjudication and administration. The Compensation Employees Union (CEU) presented a petition to management in February of 1994 that stated:

Claims volumes and complexity make it impossible to meet the Board's promises of service timeliness, quality rehabilitation and fair compensation. We, the undersigned Compensation Services staff, are compelled to make public our professional concern regarding this organization's inability to meet service expectations.

The Senior Executive Committee responded with an "Action Plan" designed to address the problems identified by the employee action. The Action Plan called for the addition of 69 new staff positions, mainly claims adjudicators, vocational coordinators, vocational rehabilitation consultants, and support staff. It also converted 26 temporary positions to full time permanent positions. The net long-term cost impact of the Action Plan was projected at slightly over \$2 million per year. Performance of the Division will be examined in Chapter 8.

Vocational Rehabilitation Services Department

The Vocational Rehabilitation Services Department provides vocational assessment and planning, placement assistance, counselling, skill training, job readiness training referrals, and employability assessments for disabled workers and dependants who are eligible for Board benefits. Such benefits are not granted by the Act as a matter of right; rather the Board is to use its judgment as to who will benefit from vocational rehabilitation services and what services they need. The Vocational Rehabilitation Services Department makes these judgments on behalf of the Board, and then, working with the Claims Adjudicator responsible for the overall conduct of the case, supervises the provision of the services to injured workers and their dependants. The basic goals of the department are:

- (1) To return injured workers to productive employment, paying wages or salaries equal to or greater than what was earned prior to the injury.
- (2) To help workers overcome the effects of their disabilities.

There were a total of 85 Vocational Rehabilitation Consultants employed by the WCB at the end of 1994. The consultants are attached to individual claims units, but their supervision comes primarily from the Vocational Rehabilitation Services Department. This department was reorganized in the summer of 1995 to return more control and responsibility to central Vocational Rehabilitation management. This follows a 2-year period during which Vocational Rehabilitation Consultants were supervised by the Client Service Managers in the SDLs. (See Chapter 6)

Referrals to Vocational Rehabilitation are made by WCB Claims Adjudicators, medical practitioners, unions, social service agencies, and claimants themselves. Referrals are for claims where medical evidence indicates that the workers will experience difficulty in returning to the pre-injury employment and claims where the pre-injury employment is no longer available because of the length of time the worker has been disabled. In addition, the Vocational Rehabilitation Services Department has the responsibility of preparing "Employability Assessments" to be used by the Disability Awards Department for making permanent disability pension awards. (See Chapter 5) A full description of the Vocational Rehabilitation Services Department and its program is presented in Chapter 6 of this volume.

Disability Awards Department

The Disability Awards Department has responsibility for adjudicating permanent disability claims and fatal claims. As will be described more fully in Chapter 5 on Benefits, the WCB uses both a functional impairment system and a loss of earnings pension system to determine benefit payments for permanently disabled workers covered by the Act. The disabled worker receives whichever of the two permanent disability benefits is greater. The department also adjudicates lump sum disfigurement benefits.

In addition, the Department administers benefits under Section 24 of the Act. This program allows the Board to reconsider the adequacy of benefits being paid to workers who sustained permanent disabilities in injuries 10 years or more previously. It is limited to persons with impairments assessed at 12 percent or more, or to those who today would likely receive projected loss of earnings benefits. The Disability Awards Department has 71 employees to achieve its mandate, reflecting the heavy level of adjudication and administration that is required on these complex, long-term cases.

Medical Services

As indicated earlier, the Medical Services Department within the Compensation Services Division supports adjudication and vocational rehabilitation with medical expertise. With a staff complement of 72 persons (about 45 doctors) and a budget of \$7.8 million, the Department conducted 12,661 medical exams in 1994 and produced a total of over 60,000 medical opinions. The physician is frequently the dominant force in determining compensability in complex cases, but medical judgments are subject to review by Medical Review Panels, the Appeal Division, and the Workers' Compensation Review Board. The MRP process leads to reversal in about 50 percent of the cases evaluated, and some critics of the WCB allege that this demonstrates an "anti-claimant" attitude on the part of WCB medical staff (see Chapter 4 for a discussion). Recent efforts in the Department have concentrated on upgrading the technical competence of the staff and encouraging their broader exposure to the community, both through work-site visits and scholarly research and publication.

Before 1994, the Medical Services Department was a separate division, reporting directly to the President/CEO. In 1994, it was reorganized to align its mission more closely with the Compensation Services Division. A small client satisfaction survey was conducted in 1994 (123 respondents) to gather feedback from Medical Services Department clients. The survey indicates that client/respondents were comfortable with the structure and conduct of their examination.

About 93 percent agreed or strongly agreed that the doctor explained the purpose of the examination, and 97 percent said that the doctor treated them with respect and courtesy. However, only 76 percent agreed with the recommendations of the doctor, as might be expected when dealing with issues of benefit entitlement.

Other Functions

The Microfilm Section of Compensation Services (20 employees) historically was in charge of archiving the old claim forms, after the claims were no longer active. However, with some of the recent legislative and operational initiatives, this mission has and will continue to change dramatically. Microfilm has sustained a considerable burden from the FIPP requests discussed earlier, plus the e-file initiative discussed below will change the workload dramatically. Microfilm will become the front end of the claims management process rather than the tail end, as the input of forms to the e-file will enable all additional claims adjudication and management activities.

The office of the Senior Policy Adviser analyses policy issues for the Division and provides policy input to the corporate Policy and Research Department. The Finance section provides budget and performance analysis to support divisional management. The Human Resources section also supports divisional management, with Human Resource Advisers involved at the department level as well. There is also a small Compensation Systems group (seven fte's) that provides expertise in statistical and information reporting for the Division. This group is playing a critical role in the new divisional initiatives discussed below.

The Training and Education Centre (TEC) provides technical training to staff within the Compensation Services Division. It both designs and maintains specific training curricula for WCB personnel. However, the Centre was shutdown during 1994 to help cope with the adjudication emergency mentioned above. The TEC had grown rapidly from its beginnings in 1991 to involve over 1,000 participants and nearly 5,000 training days annually. It will be re-opened late in 1995 with a new mission and new staffing plan to serve the redefined skill and development needs of the Division.

By way of summary, it is obvious that the Compensation Services Division is a large, complex organization. It is constantly evolving and redefining itself in an attempt to achieve its mission in a more effective and efficient manner. The operation of the Compensation Services Division in adjudicating and administering claims will be reviewed in the next section of this chapter. That review will be followed by a discussion of the new initiatives that are occurring in the Division in 1995.

The Claims Process

The actual processing of claims will be discussed in this section. The emphasis will be on the steps that a claim goes through as it is processed at the WCB. The section will conclude with an overview of the claims flow through the workers' compensation system of British Columbia, including appellate bodies.

Claims Registration

The claims registration process initiates the file on a claim at the WCB. The Act requires that the injured worker (or dependant, in the case of a fatal claim) notify the employer whenever an injury or disabling occupational disease occurs (Section 53(1)). Notice to the Board by the worker is made on WCB Form 6, "Application for Compensation and Report of Injury or Industrial Disease." Those covered by Personal Optional Protection use WCB Form 6/7, "Independent Operator's Application for Compensation and Report of Injury." The claim must be initiated within one year of the injury or death, except in the case of occupational diseases where it is one year from the date of disablement. Failure to report as required is a bar to compensation, unless it can be shown that there were special circumstances which precluded the filing of an application.

The employer is also required to report to the Board, within three (3) days of occurrence, whenever an injury to a worker arises out of and in the course of employment. The employer reports on WCB Form 7, "Employer's Report of Injury or Industrial Disease." The notice period begins to toll when the employer or his/her representative is notified of, or becomes aware of, the injury or illness. Failure to comply may leave the employer liable for the full, direct costs of compensation over and above the annual assessment for general coverage, unless the Board is satisfied that the delay in reporting was excusable. However, the timely reporting requirement has not been aggressively enforced by the WCB in recent years.

Attending physicians (and other qualified medical treatment practitioners) are also obligated to report to the WCB when they attend or consult on a case involving injury or occupational disease to a worker covered by the Act. WCB Form 8, "Physician's First Report" must be filed within three (3) days of first attendance upon the worker. So long as treatment continues, progress reports must be provided regularly on WCB Form 11, "Physician's Progress Report," or comparable Forms 11c through 11n for other practitioners. Failure to report can leave the practitioner subject to suspension or cancellation of rights as a practitioner in the WCB system, and possible notification of this action to the appropriate provincial licensing bodies.

Receipt of one of these three forms (WCB Form 6, 7, or 8) initiates a claim at the WCB. Receipt of any other WCB form, or other correspondence, also triggers the claims registration process. The incoming document is delivered from the mailroom to Claims Registration. Here it is determined whether the form relates to a claim that is already known to the WCB (identified), in which case the document is “registered” by being keyed in to the database and data retrieval mainframe computer system developed at the WCB, called the Claims Registration System, and sent on to the appropriate Service Delivery Location for substantive processing. If the incoming document cannot be identified with an existing claim after a thorough search of the computer records by the CRT Operator, a new claim file is started and the claim assigned to an SDL according to the location of the employer.

The Employer’s Report (Form 7) is also sometimes routed through the Assessment Department to ensure that the information about the employer is correct. This saves a great deal of time and trouble later since employers are allowed to protest the posting of inappropriate claims to their account.

Initial Adjudication⁸

For temporary disabilities a WCB Claims Adjudicator (or Claims Officer who performs the same basic functions but for claims at reduced levels of complexity) determines whether compensation is payable in any particular instance. This includes the decision as to whether the claimant was employed under the terms of the Act, was injured in covered employment, whether the injury arose out of and in the course of that employment, whether the claimant is suffering from an occupational disease caused by his/her employment, and any other issues that might affect compensation. Medical Advisers are available to assist Claims Adjudicators in reaching these decisions. Of course, all such Claims Adjudicator decisions are subject to appeal to the Workers’ Compensation Review Board and the Appeals Division, and in the case of a medical judgment, to a Medical Review Panel. A full discussion of the appeal process is offered in Chapter 4.

Following acceptance of a claim, the Claims Adjudicator is responsible for determining the type and amount of compensation to be paid. This includes not just weekly wage-loss benefits, but also health care, transportation and subsistence costs, and other items as necessary. The mainframe computer Auto Wage Loss System assists the adjudication process and executes payments as directed

⁸ This discussion is primarily oriented to temporary disability claims. In the WCB system, all permanent disability claims will be adjudicated again by the Disability Awards Department for a permanent pension. This process is described in Chapter 5 in the section “Permanent Disability.”

by the Claims Adjudicator or other officer of the Board. The initial determination of the weekly compensation benefit rate is made on the basis of worker and employer reports, and is reevaluated if payments continue beyond eight weeks. See Chapter 5 for a full discussion of the benefits payable under the Act.

It is also the responsibility of the Claims Adjudicator to determine whether a claim should be referred to the Disability Awards Department for permanent disability pension evaluation. This would include claims where a medical report indicates that a possibility of permanent disability exists, where a worker indicates that there is an inability to return to employment as a result of the injury, or where there is any other indication of a potential permanent disability.

WCB adjudicators are expected to both investigate and adjudicate claims for compensation to the best of their ability. Further, as described previously, the Board has exclusive jurisdiction to determine all questions of fact and law in claims for compensation, and the decision of the WCB is final and conclusive, not open to review in any court. (Section 96) While representation by the parties is allowed in initial adjudication, it is very rare. A detailed manual, called the *Rehabilitation Services and Claims Manual* (RSCM) lays out Board policies and procedures. It is the primary resource for adjudicators and others with questions about how particular situations are to be handled. It was formally adopted as WCB policy by the Board of Governors in 1991 and is revised as required by changes in WCB policy.

The WCB is not bound by legal precedent, but decides each claim according to the merits and natural justice of the case. Board officers (Managers, Claims Adjudicators, Claims Officers, and Vocational Rehabilitation Consultants) making decisions on claims are guided by WCB policies, as promulgated by the Board of Governors. The Claims Adjudicator is not to begin fact finding with any presumption against the worker, nor with any presumption in his/her favour. However, the Act does specify that "... where there is doubt on an issue and the disputed possibilities are evenly balanced," the issue shall be resolved in accordance with that possibility which is favourable to the worker. (Section 99)

The Claims Adjudicator is to examine the evidence to determine whether it is sufficiently complete and reliable to provide a conclusion with some confidence. This judgment, however, is up to the adjudicator operating within the law and WCB policy, subject to review by management or upon appeal. WCB adjudicators have a professional responsibility to discover the evidence and weigh it carefully before making a decision.

In the majority of claims, the issues of compensation are determined with reference solely to the evidence submitted in the injured worker's application, the employer's report, and the attending physician's report. However, where this is not sufficient, in the judgment of the Claims Adjudicator, the Board has

broad powers of investigation, including the power to compel the attendance of witnesses and the production of materials germane to the claim (by subpoena). The Board may take depositions, examine witnesses under oath, and use other “like powers as the Supreme Court.” (Section 87(1))

A typical SDL unit in Richmond handles approximately 15,000 wage-loss claims per year, plus perhaps another 1,500 re-openings. This workload is generally spread between 10 or 12 Claims Adjudicators and Claims Officers (including the contribution of floaters to fill in for vacations, etc.). Thus, on average, most decisionmakers are adjudicating over 1,300 initial claims per year, more than 100 per month, about 5 per working day. Because of the pressure to reach a decision and move on to the next file, most adjudicators we have talked with express frustration with the inadequate time and resources to make the judgments called for, without fear of mistake or reversal on appeal. In addition, many expressed concern over the lack of standards or policy guidance, presumably to be developed through staff development activities.

In addition, adjudicators are required to deal with issues that arise from claims that have been previously adjudicated, (i.e., re-openings), with status changes, and keeping informed on Board policy, etc. While it is theoretically the case that re-opened claims go back to the original adjudicator, this is frequently not possible. With the turnover in the adjudicator ranks, often times an adjudicator receives a voluminous file which must be reviewed to determine whether the claimant is eligible for a new treatment, or perhaps a change in benefit level. Claims Adjudicators are allowed to go into the field to investigate claims, but the practical reality is that they do not have the time. Oftentimes, this results in decisions based on insufficient evidence, which may lead to an appeal later on.

In 1991, the Administrative Inventory reported that the adjudicators felt crushed by the continuous flow of cases onto their desks. A day away from the office due to illness or vacation meant another batch of claims arrived for adjudication and would be added to the caseload, typically from 60 to 100 claims per adjudicator. In addition, the performance of the individual adjudicators and the unit as a whole is evaluated partly on the basis of the “paylag” between the day following the date of injury and the mailing of the first wage-loss payment. The paylag target is 17 days, and Richmond SDLs (except ODS) are expected to make payments on at least 40 percent of claims within this standard, while Area Offices are expected to achieve 50 percent.

As a result of the perceived workload pressure, the declining paylag performance, and the CEU petition in February 1994, the Division has been searching for ways to manage the caseload more effectively. One change introduced as a result of the Transition Project in 1993 was the initial/ongoing adjudication model. This model diverted ongoing case administration, or “subsequent” ad-

judication issues, and assigned them to a separate group of Compensation Adjudicators. The initial adjudicators concentrated on reaching timely decisions on new claims. In addition, Managers of SDLs were given the responsibility of dealing with inquiries from claimants whose claim had not yet been adjudicated for one reason or another.

Experimentation continued with the imposition of a “queuing system” for assignment of cases to adjudicators that replaces the previous random assignment system. This means that new cases are delivered to an adjudicator only when he/she is ready, rather than being delivered without regard to the existing backlog of cases. This innovation also means that the SDL and Divisional management are responsible for managing the backlog, rather than the individual Compensation Adjudicators, who do not have any resources to cope with the problem. This was reported to be a significant improvement in working conditions by adjudicators interviewed for this project. It is not clear what the impact has been on claimants, but labour sources indicate that injured workers are not satisfied that queuing has led to any improvements in the timeliness of service.

Termination of Benefits

Temporary wage-loss payments (whether total or partial) continue only as long as the temporary disability lasts. When the condition stabilizes, a new determination of eligibility must be made. If an injured worker returns to work at pre-injury wages, his/her employer files WCB Form 9 “Employer’s Statement of Return to Work.” Absent contrary evidence, this will terminate wage-loss payments, although medical benefits continue, if necessary, to effectuate as complete recovery as possible. The entitlement to medical treatment for the injury or illness never ends.

When a physician, or other qualified practitioner determines that the worker’s condition has plateaued, but some residual impairment remains, adjudication for a permanent pension must be conducted by the Disability Awards Department. Frequently temporary wage-loss benefits are terminated before the Disability Awards Department can adjudicate the permanent pension entitlement. In this case, the Vocational Rehabilitation Consultant can authorize continuity of earnings (“Code R”) payments in anticipation of permanent disability benefits. These payments are designed to bridge the gap between temporary wage-loss benefits and the permanent pension benefit for those with significant permanent disabilities. Such payments do not apply to minor functional impairments.

Disputes During the Duration of the Claim

The major disputes arising during the duration of the claim are likely to be over the level of the wage-loss benefit (especially when this is reevaluated at eight weeks duration), the appropriate rehabilitative treatment of the condition, the capacity of the injured worker to return to work, and the level of permanent pension entitlement, if any. WCB policy guides the determination of the appropriate compensation in such disputed cases. References to the *Rehabilitation Services and Claims Manual* (RSCM) will guide the discussion in this section and serve to illustrate the type of policy guidance offered to adjudicators by the manual.

Section 34.54 of the RSCM lays out WCB policy to resolve questions about when the worker's condition has stabilized. The examining doctor is to declare whether:

- (a) the condition has definitely stabilized;
- (b) the condition has definitely not yet stabilized;
- (c) s/he is unable to state whether or not the condition has definitely stabilized and
 - (i) there is a likelihood of minimal change; or
 - (ii) there is a likelihood of significant change.

In the case where the condition has definitely stabilized, the condition is considered permanent and the claim will be referred to Disability Awards for pension assessment. Where the condition has not yet stabilized or plateaued, temporary wage-loss benefits will continue until there is a change in status. If the physician is unsure, but thinks there is likelihood of only minimal change, the claim will be considered for permanent pension. In the case where the physician thinks there is likelihood of significant change, and the prospects for resolution within 12 months are good, the disability will continue to be considered as a temporary disability claim. If the prospects for resolution within 12 months are not good, the disability will be evaluated for pension based on the workers' present degree of disability, and the claim will be scheduled for future review.

Disputes over medical or other rehabilitative treatment of the claimant are among the most troublesome disputes among disability claims, since they generally pit doctors against one other. WCB policy is laid out in Chapter X of the RSCM. Section 21 (6) of the Workers' Compensation Act states that:

Medical aid furnished or provided under any of the preceding subsections of this section shall at all times be subject to the direction, supervision and control of the Board; and the Board

may contract with physicians, nurses or other persons authorized to treat human ailments, hospitals and other institutions for any medical aid required, and to agree on a scale of fees or remuneration for that medical aid; and all questions as to the necessity, character and sufficiency of medical aid to be furnished shall be determined by the Board.

The Board in its *Rehabilitation Services and Claims Manual* enlarges on this language as follows:

The Board uses its control over treatment to promote recovery, and to exclude choices by patients or doctors that will delay recovery, or create an unwarranted risk of further injury. But the control of treatment by the Board is not intended to exclude patient choices. If there are reasonable choices of treatment, or reasonable differences of opinion among the medical profession with regard to the preferable treatment, or choices to be made that depend on personal preferences, the matter should be regarded as one of patient choice. (Section 78.10)

WCB Medical Advisers have the responsibility to advise the Claims Adjudicator whether a given plan of treatment is an appropriate treatment for approval by the WCB. These provisions inevitably lead to some conflicts over the proper course of treatment, or the necessity for proposed procedures to assist the recovery of the injured worker. Some physicians in British Columbia express frustration in dealing with the WCB. The perception of physicians is that the WCB is constraining the physician's ability to practice medicine under the guise of a managed care system. Workers also resent any limitation on their freedom of choice in medical treatments. Disputes with providers of rehabilitative care as to the appropriate treatment, or reasonable charges for that treatment, and with claimants over the selection of the treating physician or institution are fairly common in workers' compensation systems, although less so in British Columbia than in other North American systems. See Chapter 4 for a full discussion of dispute resolution mechanisms.

The attending physician generally makes the determination of when the injured worker is able to return to work. However, the WCB Medical Adviser will get involved in cases where some question about readiness for return to work arises in the mind of the adjudicator or the attending physician. The Medical Adviser can call the claimant in for a physical exam at the WCB, or can send him/her to a consulting physician for a second opinion. The Claims Adjudicator is responsible for making the final decision, but usually depends heavily upon the advice of the Medical Adviser.

Claim Re-Openings

Section 96(2) of the Act (as amended by Bill 27) provides that:

...the Board may at any time at its discretion re-open, rehear and redetermine any matter, except a decision of the appeal division, which has been dealt with by it or by an officer of the Board.

Further, the WCB distinguishes carefully between “re-openings” and “reconsiderations.” An application for “re-opening” is one that does not question the validity of a previous decision, but requests that further compensation be paid on the basis that the claimant’s circumstances have changed since the decision was made. An application for “reconsideration” is one that does question the validity of a previous decision on a claim and requests that a change be made in that decision. (*Rehabilitation Services and Claims Manual*, Section 106.20)

The application for re-opening is treated as a new matter for adjudication and a decision is made by the Claims Adjudicator, subject to the usual appeal procedures. If the re-opening occurs more than three years from the date of injury, the wage rate for benefit determination may be reevaluated by the WCB based on the current circumstances. If the Board feels that the current wage would more nearly represent the actual loss of earnings, it can calculate the compensation rate as if the recurrence were the happening of the injury. (Section 32(1) of the Act)

Reconsiderations of previous WCB adjudication decisions are treated differently. The WCB is anxious to avoid simply rehashing the same facts; so it is required that an application for reconsideration cite new evidence not available at the time of original adjudication, or a mistake of evidence or law. Under the old act (before Bill 27), such requests were either handled informally by the Claims Adjudicator, or referred to the Commissioners if they involved a Review Board finding. Adjudicators are allowed to correct errors on claims which do not involve in excess of three months retroactive reduction or cancellation of benefits, with consultation and concurrence of their manager. Furthermore, the Directors and Managers within the Compensation Services Division are empowered by the Board to “modify a decision or substitute their decision for any decision ...” made earlier by an adjudicator. Of course, all decisions of the WCB involving workers benefits can be appealed to the Review Board, or, if they involve a medical dispute, to a Medical Review Panel. These procedures are described in detail in Chapter 4.

Claim Flow and Volume

Figure 3.5 provides a summary of the overall claim flow, and gives a sense of the general order of magnitude of the various alternatives. It can only give a rough sense of the magnitudes because all of the numbers in the figure are taken from 1994 annual results, and therefore are not strictly comparable. For example, the number of claims granted permanent disability awards in 1994 does not emanate from the total number of injuries first reported in 1994. Rather the disability awards in 1994 represent the end process of the adjudication of claims from several years, including 1994. Thus, it is not strictly accurate to calculate percentage figures in moving from level to level within the figure. However, this is done to help provide some perspective on the dynamics of the claim population in the WCB system, and to enable a better grasp of the relationship between the sizes of different claim populations.

Figure 3.5 reports that there were nearly 197,911 injuries first reported to the WCB in calendar year 1994. This includes all “claims” identified during the registration process as new claims originating with some report of injury in 1994. During 1994, it was determined that 1,846 claims were not appropriate, because they were received from injured persons who were not covered by the Act; these claims were “rejected.” Over 48,000 claims were “adjudicated and not paid.” These were claims which were determined to be potentially compensable, but in fact no benefit was actually due, or the claimant did not pursue the claim. In 1994 the figure shows there were nearly 60,000 claims accepted that did not involve any wage-loss benefit but were eligible for Health Care payments. There were also 81,336 wage-loss claims and a total of 152 fatal claims that entered payment status during the year. This gives a grand total of 140,785 paid claims originating during 1994.

A total of 6,994 claims (about 3.6 percent of Injuries First Reported) were “disallowed” by adjudicators during the year, including 50 fatalities. These were claims that the adjudicators did not feel were work related disabilities, or that were otherwise not eligible for benefits. Using the category of claimants who were eligible, but whose claims were not found to be worthy, the WCB cites a claims approval rate of nearly 97 percent for the adjudication process. Of course, some of the claims that were disallowed by the WCB in 1994 will be appealed to the WCRB or MRP and benefits may be approved at a later date.

During calendar year 1994, the Vocational Rehabilitation Services Department received a total of 9,323 referrals. This constitutes 4.7 percent of all injuries first reported, and 6.6 percent of claims adjudicated and paid in 1994. In 1994, there were 4,765 functional impairment awards and 571 loss of earnings pensions awarded by the Disability Awards Department for an incidence rate of 3.8 percent of all claims adjudicated and paid during that year. It would be 6.6 percent of new wage-loss claims in 1994.

The Review Board (WCRB) received 8,780 appeals during 1994, but each issue constitutes a separate appeal, so this number cannot be compared directly to the number of claims adjudicated during the year. The WCRB published 6,820 “findings” and “summary findings” during the year. There were a total of 452 Medical Review Panel appeals received during 1994. Finally, there were 1,860 appeals to the Appeals Division in 1994 (167 appeals were withdrawn), and a total of 1,234 decisions issued.

New Initiatives

With nearly 200,000 new claims registered and over 80,000 wage-loss claims first paid in 1994, the claims process at the WCB is necessarily designed to handle a huge volume. At the same time, it is important that each claim and each claimant receive the individual attention they deserve. Walking the tightrope between these goals is not easy, and the WCB has been criticized in the past for “bureaucratic” excesses. Further, the record that the Compensation Services Division has compiled since 1991 in “attacking” these excesses is not an inspiring one. In particular, the Transition Project within the Compensation Services Division during 1992 and 1993 is regarded as a “dismal failure” by employer interests. Nevertheless, there is great enthusiasm among the new management team at the Division over a series of new initiatives that are in various stages of development at the present time.

The new initiatives in the Compensation Services Department are primarily concentrated under the administration of the Executive Director. (Figure 3.2) In addition to overseeing the lower mainland SDL's, he supervises a small group of people who are trying to invent and test new and improved methods of managing claims. During the summer of 1995, they were concentrating on the development and testing of a new Service Delivery Strategy (SDS). This would begin with an electronic file system that would replace the paper-based files that the WCB has always depended on. This initiative would encompass electronic forms filing by employers and health care providers. There is also a “Form 14” Project which contemplates combining current WCB Forms 6 and 8 from injured worker and doctor, respectively. The idea is to consolidate reporting to simplify claims adjudication and processing at the WCB.

The move toward the “queuing model” of claim assignment among individual adjudicators was described earlier in the chapter. This is an attempt to address internal work flow issues and to honestly and openly “own” the adjudication delays at the WCB. There is also an experiment to transfer adjudication of repetitive strain injuries from the Occupational Disease Services (ODS) unit to

the SDLs. The motivation is that they have now become so commonplace as to no longer justify “special” treatment in adjudication. During the summer of 1995, Claims Adjudicators from the Victoria Area Office were being trained to adjudicate routine repetitive strain injuries in another pilot effort.

An improved health care benefits payment system was also being implemented during June 1995, with long-run plans to use the provincial Medical Services Plan to generate these payments. The thrust of these initiatives is to improve efficiency, reduce processing time, move to a self-directed work flow for employees, and enhance customer service. One of the SDLs, Coquitlam, has also been designated as a demonstration site for new initiatives. The plan is to implement new procedures in this SDL first, to test their operational implications and feasibility. If they prove out in the demonstration SDL, they then can be rolled out across the Compensation Services Division. There is also an emerging effort to design a new performance management system. The Division is working with a consulting firm to develop appropriate measurement systems and internal comparisons that would support service improvements, more effective use of resources, and improved accountability.

Each of these initiatives has potential, and they all show promise of alleviating some of the claims adjudication and administration shortcomings of the past. Along with the clients and stakeholders of the WCB, we look forward to seeing how these plans work out in practice.

**Table 3.1 Number of New Claims Registered by SDL
January through December 1994**

	Location	New Claims	First Paid
1.	Surrey	17,617	7,838
2.	Vancouver Centre/North	17,004	7,354
3.	Vernon	16,200	6,033
4.	Richmond	15,890	7,727
5.	Victoria	14,770	6,152
6.	Prince George	13,900	4,152
7.	Burnaby	13,785	6,415
8.	Vancouver South	13,037	6,784
9.	Nanaimo*	10,368	3,719
10.	Coquitlam	9,527	4,367
11.	Abbotsford	8,932	3,964
12.	Courtenay	8,596	3,148
13.	ODS	8,538	3,683
14.	Kamloops	8,545	2,770
15.	Terrace	6,092	1,959
16.	Cranbrook	4,121	1,363
17.	Nelson	3,833	1,509

* A boundary adjustment occurred in April of 1994 and major increases in volume were experienced in Nanaimo.

Source: WCB, Internal Report

WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA

July 3, 1995

Figure 3.1

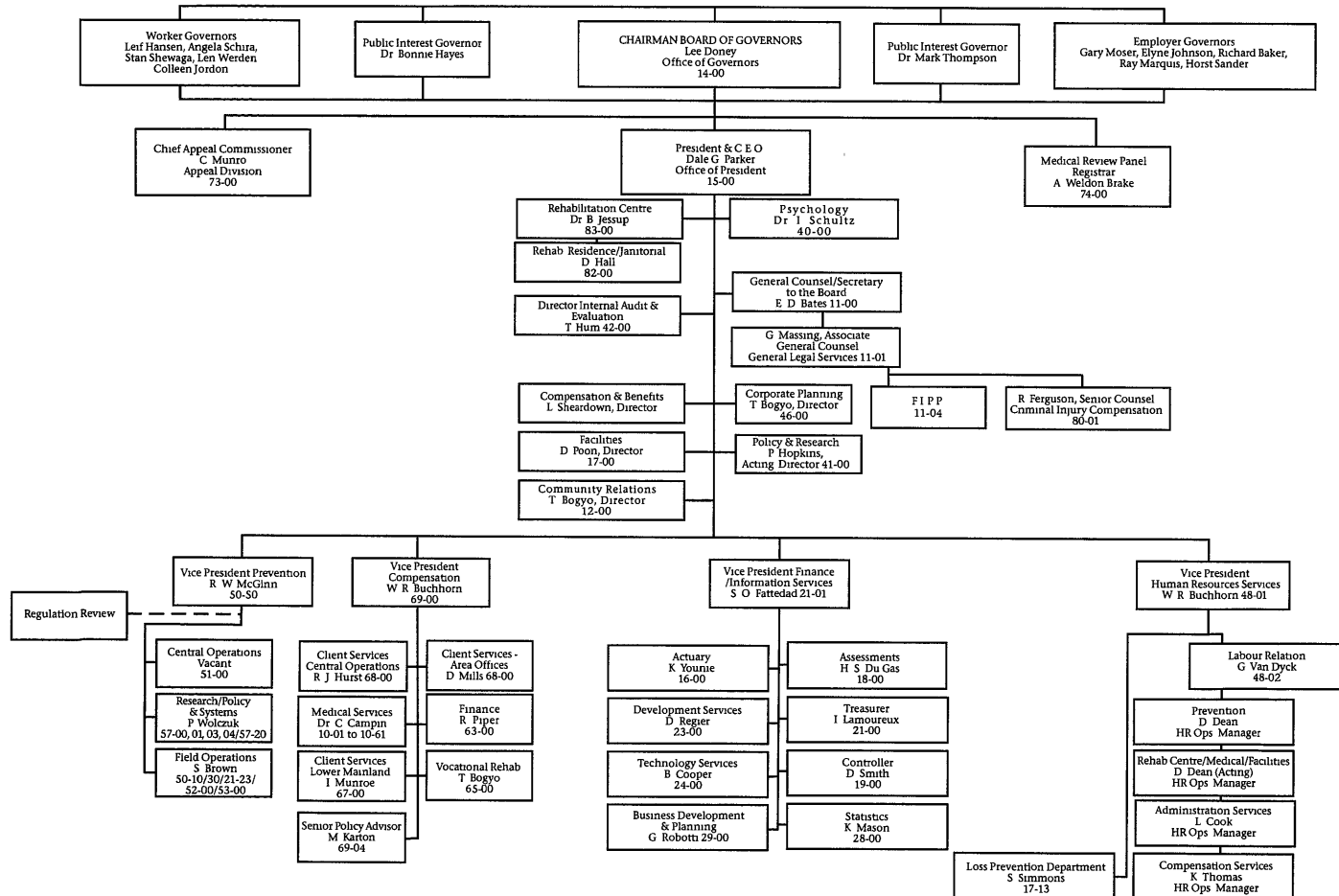


Figure 3.3 — Structure of a Lower Mainland Service Delivery Area (SDL)

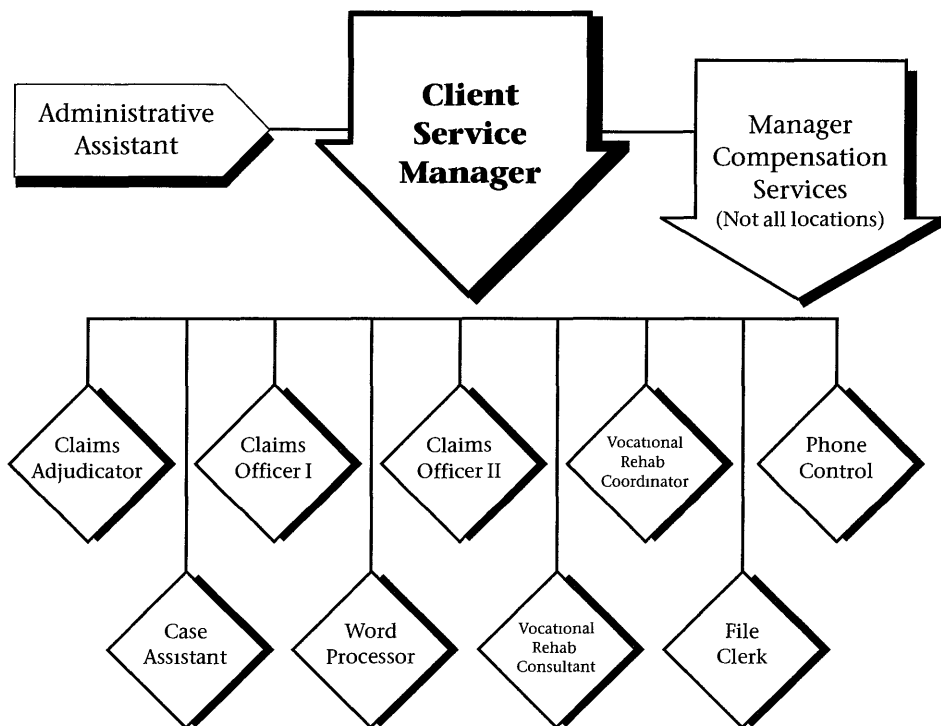


Figure 3.4 — Geographical Organization of Workers' Compensation Board

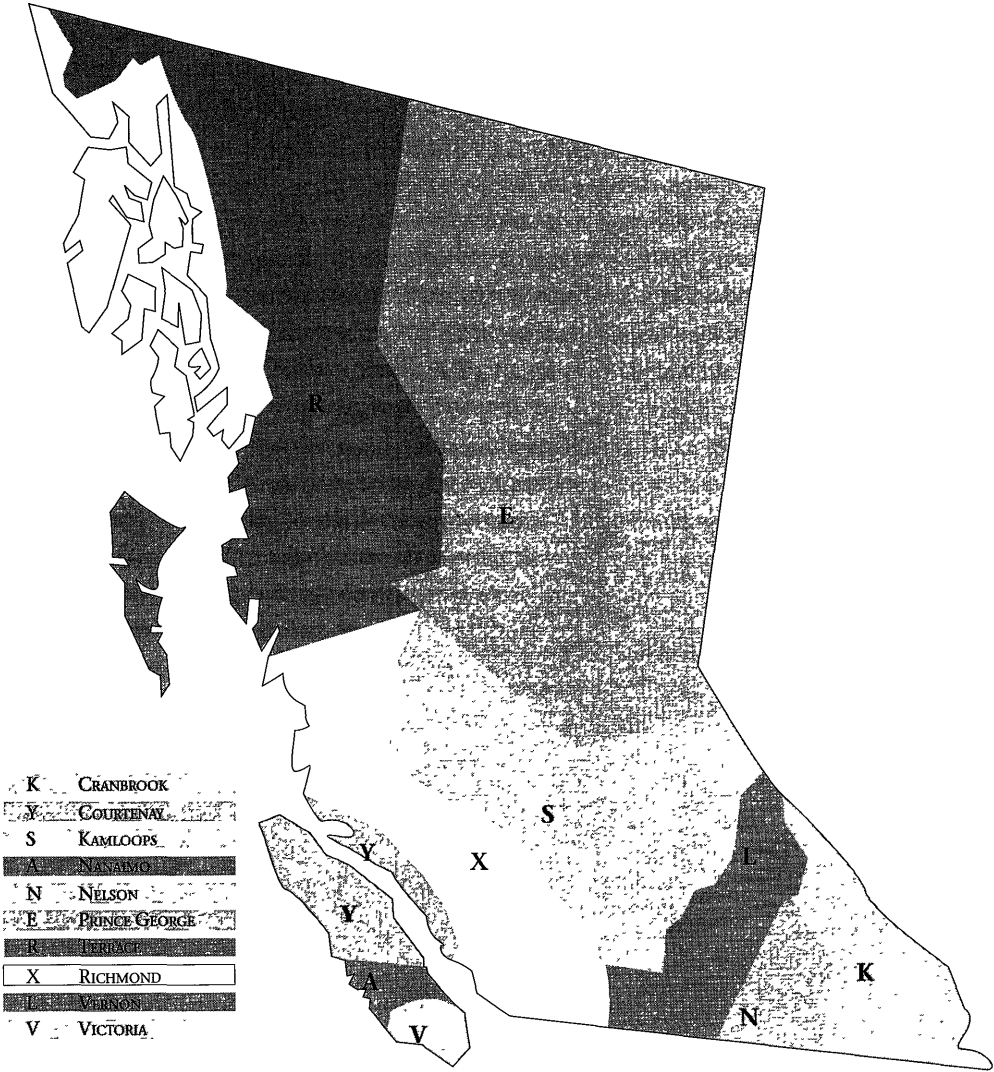
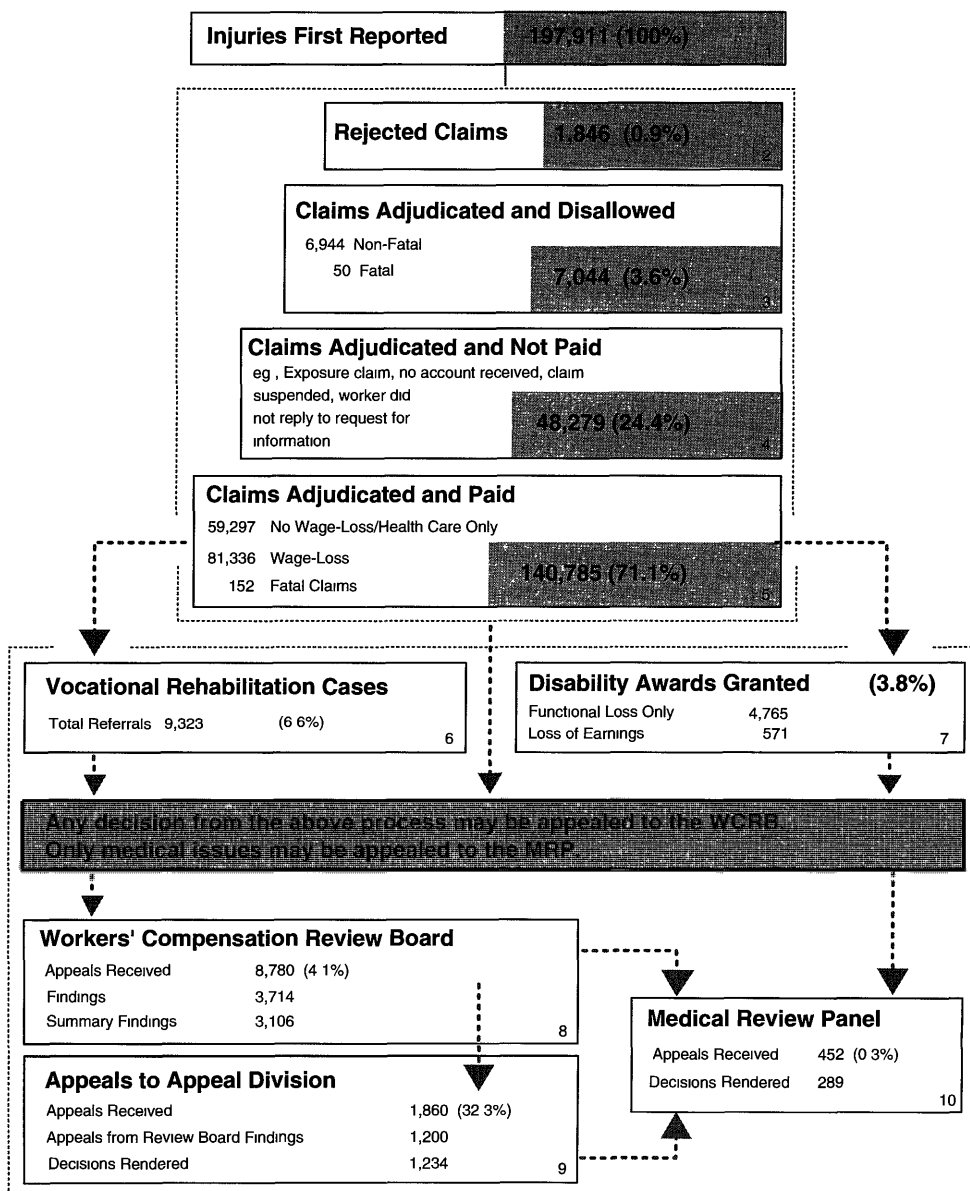


Figure 3.5 – Claims Flow Statistics - 1994



Note Statistics are for current year but may have arisen from claims in previous years

Figure 3.5 Footnotes

1. **Injuries First Reported:** Includes all initial reports of injury based on employer's, worker's, or doctor's first report. Does not include requests for re-opening of existing claims. (Source: Annual Report)
2. **Rejected Claims:** Those where the claimant was employed by an employer not covered under the Act, a self-employed worker with no personal optional protection, or a report submitted in error. (Source: Statistics Department)
3. **Claims Adjudicated and Disallowed:** In these cases, the worker is entitled to make a claim, but the claim has been disallowed through adjudication. (Source: Statistics Department)
4. **Claims Adjudicated and Not Paid:** Claims of a valid nature but not involving any payment or where no further action is possible due to a failure of contact with injured worker or lack of accounts received. (Source: Statistics Department)
5. **Claims Adjudicated and Paid:** Claims received and determined to be proper claims, first paid in 1994. (Source: Statistics Department)
6. **Vocational Rehabilitation Cases:** The total number of referrals to the Vocational Rehabilitation Services Department in 1994. Of 8,589 individuals who received VR services in 1994, some 3,466 received only "limited intervention." A total of 49 percent of the rest, or 2,490 workers were successfully returned to work in 1994. (Source: Vocational Rehabilitation Services Department)
7. **Disability Awards Granted:** Generally, these will be claims initiated in previous years. Loss of earnings awards are predicated on the existence of a functional disability. This figure separates them for reporting purposes, however. (Source: Disability Awards Department)
8. **Workers' Compensation Review Board:** Several appeals may be received on a single claim, therefore appeals received does not equal the number of claims at appeal. Summary findings are those which involve cases where the appeal is withdrawn, abandoned, involves an issue beyond the Review Board's jurisdiction, is out of time, etc. Findings relate to the specific issues appealed. Of the findings, 1,334 were in favour of the workers who brought the appeals with 2,271 denied to the workers who brought the appeals. A total of 45 were in favour and 64 denied to the employers who brought the appeals. (Source: Workers' Compensation Review Board)
9. **Appeals to Appeal Division:** Of the 1,860 Appeals received, a total of 1,200 were Appeals from Review Board findings, while just two arose under the provision of section 96(4). The remainder were Appeals from employers of prevention penalties, ERA or Assessment matters, Relief of Cost petitions, and others. A total of 167 appeals were rejected or withdrawn during 1994. (Source: Appeal Division)
10. **Medical Review Panel:** While 452 applications were received, a total of 535 applications were considered in 1994. Of these, 343 were determined to be bona fide medical disputes under the Act. Of the remainder, 119 involved determinations that a bona fide dispute had not been defined, 35 were rejected as out of time, 38 were withdrawn, and 30 were incomplete.

Chapter 4

DISPUTE RESOLUTION SYSTEMS

Introduction

The purpose of this chapter is to describe the dispute resolution process used in workers' compensation claims in British Columbia. That process will be sketched very briefly to allow the reader to see the entire picture. Then, the component parts of the process will be separately analysed. The description will be of the system that has existed since June 3, 1991, when the Workers' Compensation Amendment Act, 1989 (Bill 27) went into effect.

There are three bodies, excluding the court system, that constitute appellate bodies of the Workers' Compensation system. These are the Workers' Compensation Review Board, Medical Review Panels, and the Appeal Division. Additionally, there are procedures that allow for decisions to be reconsidered or changed, adding more opportunity for review of a decision.

The sources of disputes are mostly decisions made by Board officers, that is Claims Adjudicators, Claims Officers, Vocational Rehabilitation Counsellors, or Disability Awards Officers in the Compensation Services Division of the WCB. Disputes arise also over penalties imposed by the Prevention Division or decisions made regarding employer assessments. If either a claimant or an employer is dissatisfied, they may ask the officer to review the decision, usually in the light of additional information that the appellant will provide.

Where the matter is not reconsidered or where it has been reconsidered, but the party remains dissatisfied, a manager's review can be requested. The manager is able either to accept (including modify) or reject the adjudicator's decision or return the file to the originating officer for further investigation. The manager's review was developed to allow aggrieved parties to have a more

rapid decision on an officer's decision, without involving one of the three appellate bodies. For practical purposes, it stands as the first line of appeal in dispute resolution.

A party that wishes to appeal a WCB decision involving a worker at this point has multiple options. If the issue in dispute is a medical one, the appeal can be either to a Medical Review Panel (MRP) or to the Workers' Compensation Review Board (WCRB). The decision of the Medical Review Panel is final on medical issues and cannot be appealed. However, if the appeal is taken to the WCRB and denied, the party can appeal that decision to the Appeal Division of the WCB or to the Medical Review Panel. If the WCRB finds for the appellant, the file is sent back for implementation to the unit where the original decision was made. At this point it is possible that an officer of the Board (a Claims Adjudicator, typically), may ask the President/CEO to "refer" the issue to the Appeal Division for its review and decision. Finally, if the disputed issue is a medical one, and if the appellant did not already take the dispute to the Medical Review Panel at an earlier stage in the appeal process, an appeal of the decision of the Appeal Division can then be taken to a Medical Review Panel.

Manager Reviews

In November 1979, the Board permitted the readjudication of claims, in cases where there may have been an error of law or of policy, or where there had been possible fraud or misrepresentation. In 1984, the Board established guidelines whereby a manager could substitute his or her decision for that of an officer. In June 1989, manager reviews were centralized for claims adjudicated in Richmond. Those manager reviews could result in a reversal or a referral back to the adjudicator if there had been an error of law or policy. However, some reversals apparently resulted from the expectation that the Review Board was likely to overturn the adjudicator's findings. Reacting to the strong objections raised by the adjudicators, the Commissioners directed the Manager Reviewer group to curtail the imposition of their judgments for those of the adjudicators. Beginning in 1992, the manager reviews were shifted back to the units. Today, it is the managers of the Service Delivery Locations that conduct these reviews in the Compensation Services Division.

Manager reviews are not considered to be a part of the official appeal process. Nevertheless, a dissatisfied claimant or employer is able to secure a review by a manager of any decision. In practice, it appears that very few reversals by managers occur, and then rarely on the basis of differences in judgment. Manager reviews may take only 1 — 2 hours, or more than a day, depending upon the

nature and complexity of the issues under dispute. If individual claimants or others appear before the manager to explain the grounds for their dissatisfaction, the review is likely to take longer. It will also enable the party to have a sense that someone is willing to listen to the complaint.

Manager reviews have been controversial. Some parties believe that the reviews are *pro forma* and rarely overturn an adjudicator. Thus, they are considered by those persons as nothing more than another source of delay in what can be a lengthy process. Since the reviews are not an official part of the appeal process, they can be by-passed entirely. Some managers find the reviews to be an important drain on their time. It also can be a source of friction between them and an adjudicator whose judgment is being questioned. Some persons argue that the presence of manager reviews might cause an adjudicator to devote less attention to a claim, since responsibility is likely to be shifted to the manager where a party is dissatisfied with the original decision.

A strong case for manager reviews is that it will uncover errors and slip-ups in the adjudication of a claim, without the necessity of a Review Board appeal. In so doing, it reduces the Review Board's workload and speeds up decision making for all involved parties. Also, a manager review, particularly when it is done by a local manager, means that the manager necessarily will observe the quality of the work of the adjudicators and officers by reviewing individual case files. In theory at least, it ought not require the existence of manager reviews for the manager to be aware of the care given to claims by the adjudicator. Moreover, these files are exclusively ones where there is a dissatisfied party.

For some parties, even if the outcome is not the one they had preferred the manager review may satisfy them that their case has received fair and adequate attention. If not, and they choose to appeal the issue, the next step is to appeal the matter to the WCRB, or possibly to the Medical Review Panel if it is a medical issue that is in dispute. In practice, where a medical issue is in dispute, most claimants still appeal to the WCRB initially.

Workers' Compensation Review Board

Created in 1974 as the Boards of Review, this independent tribunal became the Workers' Compensation Review Board in 1986. It stands independent of the WCB as discussed in Chapter 2. Aside from its Chair, Senior Vice Chair, Registrar and Deputy Registrars, the Review Board employed 19 Vice Chairs (2 part time), 18 employer-interest members (3 part time), 16 worker-interest members (2 part time), and 38 support staff personnel at the end of 1994. In 1994, the WCB provided \$7.7 million for the Review Board's funding.

Procedures

Appellants have 90 days to file an appeal with the WCRB, from the date they were notified of the Board officer's decision. However, the WCRB may extend this limitation as set out in the Act. The WCRB has jurisdiction over appeals of decisions by an officer of the WCB with respect to a worker. This includes Claims Officers, Claim Adjudicators, Vocational Rehabilitation Consultants and their managers, but it does not include the Medical Review Panel nor the Appeal Division. In order for it to take jurisdiction, the decision must affect a worker. Consequently, there is no right of appeal to the WCRB by an employer on a decision regarding the cost allocation of a claim or an assessment. Employer appeals to the WCRB can occur where the employer is dissatisfied with a WCB decision regarding a worker's claim. Virtually all appeals to the WCRB come from workers or their dependants.

The WCRB is made up of panels, each consisting of 3 persons. Single person panels can also be constituted. A 3-person panel almost always consists of one person with a background in organized labour, another person with a background on the management side and a Vice Chair, often a lawyer, who is not of a management or labour background. In special circumstances, a panel consisting of three neutrals can be named. A one person panel, consisting of the Chair or a Vice Chair (a neutral background), is sometimes used in those cases that consist only of a "read and review" of the record. The choice of either a one or a three person panel is determined according to criteria set out in the *WCRB Policies and Procedures Manual*. Prior to 1986, all panels consisted of three persons.

Representational panel members (drawn from labour or management) are not necessarily nominated by the respective interest groups to these positions, but they must have their support. Persons may apply for the job and use supporting letters indicating that they have some experience in or credentials with employers or labour unions. When a vacancy occurs, currently there are large numbers of applicants for the position, but that has not always been the case. Disputes involving specific issues or industries are not earmarked for specific panels, but cases are assigned to panels by the Registrar in a more or less random manner.

Panels hold hearings in 14 locations across the province, throughout the year. Hearings generally run for 1 to 1.5 hours. Appellants are frequently represented by union representatives, private lawyers or the Workers' Advisers Office. Employers have the right to attend hearings, and may be similarly represented by private lawyers, the Employers' Advisers Office (rarely), or other counsellors. Witnesses are not normally sworn; oral hearings are taped, but copies are provided only if there is a subsequent appeal. Worker appellants may bring their

spouse and children to the hearing. Some informality is deliberately maintained to put all participants at ease. When the panel completes its deliberations, it issues its findings, with reasons, in writing. The panel decision need not be unanimous, but a dissenting panel member must also explain in writing his/her decision. The WCRB's findings are those of the majority of the panel, but where no majority exists, the findings of the Vice Chair of the panel are decisive.

The WCRB may overturn an adjudicator either because it believes an error in law or policy has been made, or because it exercises a different judgment of the facts. In most cases, it is the latter that leads to a reversal of the WCB decision. On occasion, this difference in judgment arises because the claimant or his or her representative provides some information that has not been communicated previously to the claims adjudicator, not surprising since the adjudicator has not had the benefit of a hearing with professional representation for the appellant.

As observed above, appeals to the WCRB primarily come from workers or their dependants. In most cases, the appeal is essentially costless to the worker. An exception to that is when an appellant incurs expenses in connection with attending an oral hearing, and the appellant is denied the appeal. Some workers appear without any representation and the majority of those who are represented need not pay for it. Consequently, workers who are dissatisfied with any decision made by a WCB officer about their claim have little or no financial disincentive to appeal. The data in Table 4.1 reveal the number of appeals received by the WCRB in each year from 1981 to 1994. There is an irregular pattern with sizable jumps in appeals received in 1982 and 1984, then a regular up-trend from 1986 to 1991, and another jump in 1993 and 1994. Over the entire period, the number of appeals received grew by nearly 9 percent per year.

In November 1992, the Review Board instituted a new system where appeals are handled in two stages. Part 1, to be filed within 90 days of the Board Officer's decision, is a Notice of Appeal. It must be filed in writing and indicate what the reason is for the appeal. Once the Review Board acknowledges Part 1, the appellant has six months in which to file Part 2. Part 2 is similar to a Notice of Readiness in a judicial proceeding. The Notice must identify the remedy sought by the appellant, describe any new information and provide pertinent documents, the list of witnesses if any, the appellant's preference for the method of appeal (oral or read and review), and whether or not an interpreter is needed.

The use of the 2-part appellate scheme serves several purposes. It reduces the number of hearings cancelled due to "no shows," it means the parties are more likely to be prepared for their hearing, and it eases the scheduling process. It also serves to measure more effectively the promptness with which the Review Board functions. Certainly, it does seem more appropriate to gauge the Review

Board's pace from the time that the Part 2 has been filed by the applicant to the time that the panel's findings are mailed.

The use of the 2-step procedure has affected the flow of appeals in 1993 and 1994. In Table 4.1, appeals received refers to the initial, Part 1 filing. Where the appeal did proceed to Part 2, this may not have occurred until the following calendar year. In 1993 there were 7,564 Part 1 filings and 2,999 (40 percent) Part 2 filings. In 1994 there were 8,780 Part 1 filings and 5,249 (60 percent) Part 2 filings. Some of the 1994 Part 2 filings are actually based on Part 1 filings in 1993. It must be noted that filings are not necessarily equivalent to the number of persons making an appeal.

WCRB Caseload

An indicator of WCRB activity is the volume of its findings. This follows no discernible pattern, showing large increases in 1982 and 1987, and essentially flat in the period 1987 to 1990. A sizable jump in the number occurred in 1991 and 1992, followed by decline in the last two years. Even if one takes account of summary decisions, WCRB activity still appears to have been basically flat in the 1987 to 1990 period, though well above the level of 1983 to 1986, and an irregular pattern thereafter.

Summary decisions are made by the Registrar or designate, and include applications for extension of time, suspensions, withdrawals and deemed abandonments of appeals. Suspensions occur when an appeal is held in abeyance, pending some outside development. Withdrawals by appellants are self explanatory. A deemed abandonment is where the appellant does not appear to wish to pursue the appeal. The substantial increase in the number of summary decisions in 1994 was almost entirely caused by deemed abandonments when the appellant failed to file a (timely) Part 2. It is clear that summary decisions do not require the same investment of WCRB resources as do findings.

Table 4.2 shows four alternative measures of appeals activity. The data in column 1 are the number of appeals received by the WCRB expressed as a proportion of new claims registered at the WCB. Several aspects of these rates need elaboration. First, appeals received is not the same as the number of claims being appealed since there can be multiple appeals for a single claim. Second, the number of appeals includes summary decisions. As noted, these often involve little or no activity by WCRB panels. Third, an appeal received in a specific year may arise out of a claim first reported at any time. For example, some appeals come from workers whose long term disability was assessed years earlier, and who would like the WCB to reopen the claim based on some change in condition, but the WCB has declined. Finally, claims first received is not a perfect

indicator of WCB decisions in a given year, due to time lags and backlogs.

The data in column 1 of Table 4.2 show a very flat pattern between 1982 and 1989. Thereafter, the rate rises and peaks in 1994. The rate for 1984 appears to be anomalous. Column 2 is the rate of appeals received as a proportion of wage-loss cases first paid. Undoubtedly, the large bulk of WCRB appeals involve disputes in wage-loss cases. An argument can be made that the considerably higher rates of column 2, in the 6 to 8 percent range, are a more appropriate measure, relatively, of WCRB activity.

Another indicator of activity is shown in column 3, where WCRB findings (this excludes summary decisions) are shown as a percentage of claims first reported to the WCB. This gauges activity in terms of WCRB output and not in terms, simply, of new appeals input as do columns 1 and 2. If one does not consider 1981, this measure has fluctuated modestly in the range of 1.7 to 2.5 percent, with no apparent time trend. Column 4 shows the ratio of WCRB findings as a proportion of wage-loss claims first paid in that year. Since 1983, that rate has remained in the range of 4.5 to 6.1 percent.

Table 4.3 identifies the numbers of appeals allowed and denied, and the rate of allows from 1981 to 1994, by four categories. The categories are broken down by the source of the appeal, worker or employer, and means of resolution, that is, read and review appeals or oral hearings. Four things seem quite evident from Table 4.3. First, very few appeals are brought by employers. Second, the allow rate for both employers and workers is considerably lower in read and review cases than where a three person panel conducts an oral hearing. Third, the allow rate is substantially higher in appeals initiated by workers than in those brought by employers. Fourth, there has been some degree of consistency in the allow rate in claims brought by workers. If one pools the data for the oral hearings and the read and review appeals, the allow rate was between 36 and 48 percent every year. However, from the comparatively high rate of 46.7 percent in 1991, the allowed rate has dropped each year to a rate of 37.0 percent in 1994. In these past four years, both the oral hearings and the read and reviews have experienced declining allow rates each year.

Table 4.1 indicated the numbers of appeals received and decisions by the WCRB. What is evident from that table is that the WCRB has been forced in the past to cope with serious backlogs. From 1981 to 1994, there have been only four years where the WCRB disposed of more appeals than were filed. To cope with the backlog and with the growth in appeals from 1986, the WCRB has grown in size and added more panels. From 1982 to 1985, there were 7 panels, compared with 14 panels from 1987 to 1990, and 15.5 in 1993. In its busiest year, 1984, there were 726 appeals received and 444 findings issued per panel. (See

Table 4.4) In 1984 and 1985 a number of Board officers were seconded to the WCRB to do file analysis and drafting of findings. This bolstered the output of each panel. Since then, the rate of findings per panel has been about 300 per year, below the rates prevailing in 1982 – 85.

Delay at the Review Board has been a widely held concern. The 2-part appeal process was initiated in 1994. The new procedure helps focus attention on the source of the delays at this step in the appellate process. According to the WCRB, the average time from receipt of Part 1 to Part 2 was 7.4 months in 1994. From the receipt of Part 2 to the date of findings in appeals with hearings, about 6 – 7 months elapsed, with the higher end more likely in the out-of-town hearing cases. In read and review cases, the average time in 1994 from Part 2 receipt to findings rendered was 5.7 months.

The Review Board notes a continuing increase in represented appellants. In worker appeals in 1993 and 1994, workers were represented, respectively in 73 and 79 percent, of the hearings, typically by worker advisers or union representatives. For the very few employer initiated appeals in those two years, they were represented at oral hearings about 80 percent of the time.

Observations

At least three very evident sources of tension exist within the environs of the WCRB. First, there is the Review Board's relationship with the WCB and its policies. Within the WCB the adjudicators are required to follow the *Rehabilitation Services and Claims Manual*. Though the Manual is the Board's policy, the Review Board panels feel bound by it only to the extent that they consider it lawful. Thus, in addition to substituting its judgment for that of an adjudicator on factual matters, the panel and the Board Officer may also live by a different set of rules. The resentment toward the Review Board that this created before 1991 was palpable. It led to frequent efforts by adjudicators to have Review Board findings reversed by the Commissioners. We did not detect this resentment in 1995.

A second area of tension exists in the relationship of the Review Board and the Appeal Division. Matters have not been helped by those who predicted that only one of the two appellate bodies was likely to survive. However, the basis of the tension seems to be neither personal nor a simple desire to protect one's employment. Instead, it is based on the fundamental relationship that the law established. Consider an example. In one situation the Review Board denied that the Appeal Division had jurisdiction to hear an appeal over a refusal by the WCRB to grant an extension of time to a claimant. As such, the Review Board said that it would not implement a decision of the Appeal Division to allow such

an extension. There is little to be done to ensure that the Review Board does not continue to follow the practice in question. In such cases, the standoff is unlikely to end without judicial or legislative intervention.

A third source of tension resides within the Review Board. It sees as its goal to balance the principles of consistency in adjudication and the independence of panels. The law does not require that the Review Board operate on the basis of precedent. Yet, it is decidedly awkward if different panels consistently adhere to inconsistent practices. The Review Board panels cherish their independence. Any efforts to *impose* consistency can be expected to meet with resistance. However, the Review Board can be damaged, externally, if it does not achieve consistency in its adjudication. It seems quite clear that the challenge for the WCRB goes beyond simply improving its record of timeliness in resolving appeals.

Finally, it seems noteworthy that the Review Board has allowed a lower rate of worker appeals each year since 1991. If this decline is more than a random movement a number of hypotheses could be consistent with it. One possibility is that the increase in employer concern about workers' compensation costs may have affected decision making by some of the panels. It was noted above that employers can be present and more frequently play a role in challenging worker appeals than was formerly the case. Another possibility is that the Review Board is aware that the Appeal Division represents a later stage in the appeal process. Hence, a disallow decision by the Review Board does not absolutely doom the claimant's appeal effort. Prior to June 1991, decisions of the Review Board could be appealed to the Commissioners. Those appeals became mired in long delays and the Commissioners were perceived, fairly or otherwise, as less "claimant friendly" than is the Appeal Division. The result could be that in Review Board decisions that involve "close calls," the panel is more willing to deny the employee, knowing that another opportunity exists for reversal. Yet another possibility, not necessarily inconsistent with others, is that the quality of adjudication initially, at the WCB has improved. It is also possible that appeals are being brought on shakier grounds than was true in earlier years.

The Appeal Division

On the heels of the October 1988 *Report of the Advisory Committee on the Structures of the Workers' Compensation System of British Columbia* (the Munroe Report), the governance of the Board was changed with the enactment of Bill 27 (1989), effective June 3, 1991. The Bill almost totally incorporated the Report's recommendation's regarding changes in the appellate process. Section 85 of the amendment created an Appeal Division of the Board. With the exception of the Medical Review Panel, the Appeal Division is, effectively, the final stop in the appellate process for workers' compensation matters in British Columbia.

The Munroe Report devoted some effort to explaining the role that the Appeal Division should take. Unlike the Review Board, which is not a part of the WCB, the Appeal Division is. Consequently, the appeal process must be understood to involve challenging a WCB decision by going outside the agency (to the Review Board), and then, where necessary, the subsequent step is to appeal back to the agency.

A clearly stated goal of the Munroe Report was that the Appeal Division Commissioners must operate with an independent mind. To provide the needed independence from the "pressures of a governmental agenda," and from "system-generated pressures," the Report recommended that: (1) the Chief Appeal Commissioner (CAC) be selected by the Board of Governors, (2) that the Chief Appeal Commissioner have a contractual term of office, (3) that the Commissioners have only their quasi-judicial duties, (4) that the Chief Appeal Commissioner be at a coordinate level in the hierarchy with the President/CEO, and (5) that the Chief Appeal Commissioner be accountable solely to the Board of Governors. This accountability is not meant to refer to decisions in individual cases, but instead for the "general operation of the office." The Appeal Division has been created and operates consistent with these recommendations.

In viewing the Appeal Division in the broader context of the workers' compensation system, a difficult area relates to its role with respect to policy. Is the Appeal Division placed into a position where it can or must subvert Board policy? The issue is a sensitive one. Some critics of the Appeal Division believe this to be the case. In its 1993 Annual Report the Appeal Division sought to clarify its role:

Policy-making authority under the *Workers Compensation Act* is vested in the Board of Governors. There is, however, an inter-connection between the decision-making authority of the Appeal Division in individual cases, and the policy-making

function of the Governors. In the course of applying the Governors' policy, the Appeal Division is frequently required to interpret that policy in order to reach a decision. The Appeal Division must also consider the lawfulness of the Governors' policy under the *Workers Compensation Act* or the *Canadian Charter of Rights and Freedoms*.

Where in the course of considering an appeal, the Appeal Division identifies an ambiguity in the Governors' policy, or finds some aspect of the policy to be contrary to the Act or the Charter, this will be forwarded to the Governors' attention. This enables the Governors to identify the issue, and to determine whether they wish to develop new policy. To date the Appeal Division has been able to make decisions in the particular cases, and to then bring the policy issue to the Governors, rather than deferring Appeal Division decisions pending a response from the Governors.

In bringing such matters to the Governor's attention, the Appeal Division appreciates that policy requests for changes are received from many sources. The priority to be given a review of any particular policy rests with the Governors. Where the Chief Appeal Commissioner considers that a particular issue is one which merits priority, the Governors are advised accordingly.

1993 Annual Report of the Appeal Division, p. 36

The Appeal Division's statement reveals the difficult position that the Appeal Division is in, as it carries out its duties, without seeming to create policy for the Board. It also reveals how some parties might perceive it as usurping the Board's exclusive authority to set policy, particularly those dissatisfied with the Appeal Division's decisions.

The Chief Appeal Commissioner is appointed by the Board of Governors for a fixed, agreed upon term. The Chief Appeal Commissioner is responsible for the appointment of Appeal Commissioners, subject to the policies established by the Governors. Since its inception the Division has employed part time and full time Appeal Commissioners, some with contracts for only one year. Though the Chief Appeal Commissioner is a lawyer, many of the Appeal Commissioners have not been. Currently, half of the non representational commissioners

are lawyers. Appeal Commissioners are designated as representational, meaning they bring to the position a background in either the employer or the labour community, or as non representational.

The data in Table 4.5 show the staffing pattern of the Appeal Division. The number of Appeal Commissioners has been quite stable from the end of its first year, June 1992, until the end of 1994. The reduction in the number of full and part time Commissioners (one each) reflects the decline in the number of appeals, both new and backlogged, after the first year of the Appeal Division's existence. The large reduction in staff from June 1992 to December 1994 was attributable to that also, and to some reorganization of staff activity as the Division settled into its activity.

Procedures

An Appeal Division panel may consist of either one or of three Commissioners with the latter made up either of three non representational Appeal Commissioners or of three with one drawn from the employer side, one with a worker interest, and one that is non representational. In such panels, the non representational commissioner presides.

The Chief Appeal Commissioner, or her delegate, decides whether the panel will consist of one or three persons, and whether it will have representational Commissioners or not. A party in a case has the right to request an oral hearing, but must provide reasons for that. The Appeal Division need not accommodate that request. Until December 1994, if there was an oral hearing on the appeal, it was the appellant's right to choose if a 1- or 3-person panel will decide the issue. Since then the preferences of the parties are no longer binding.

The Appeal Division is authorized to hear appeals emanating from multiple sources, and to consider several additional matters. The procedures employed may vary depending upon the type of appeal in question. The large bulk of Appeal Division activity involves appeals of decisions by the Review Board. Appellants have 30 days after the finding is sent out to register their appeal with the Appeal Division. The Chief Appeal Commissioner may allow this to be extended for several reasons, including the presence of "exceptional circumstances." Notice of the appeal may be given orally, but the reasons for the appeal must be in writing.

The appeal is considered as "commenced" when the Registrar's office determines that the requirement for the provision of reasons has been met. The commencement date is significant since the statute provides that an appeal of a Review Board finding must be decided by the Appeal Division within 90 days of

commencement. Where the appellant requests a delay in proceedings, or where the Chief Appeal Commissioner considers that a longer period is necessary, e.g., the matter under appeal is especially complex, a longer period may be granted.

The rule that decisions be issued within 90 days, or the longer period designated by the Chief Appeal Commissioner, has been rigorously observed by the Appeal Division. The procedures established in 1991 made clear that the 90 — day period began not when a notice of appeal was initially submitted, but when the claim was “commenced.” In 1993 the workers’ compensation community was invited to comment upon this procedure. The responses indicated widespread satisfaction with the existing procedures and they were left intact.

The appellant must provide any written submission within 14 calendar days of the commencement of the appeal. The respondent is provided with the notice of appeal and any written submissions, and is given 14 days to reply. Subsequently, the appellant has 7 days to rebut the respondent’s position. The Chief Appeal Commissioner will respond within 10 days of the commencement of the appeal to a request for an oral hearing.

The Appeal Division operates on an inquiry basis. As such it may seek information from sources that are not a party to the appeal, e.g., from Board doctors or physicians in private practice. All issues considered by the Review Board can be considered by the Appeal Division Panel. The decision of the panel is in writing and must be signed by all its members. A dissent will also be signed. Under the former Commissioners, most decisions were made without a hearing and decisions were unsigned. Selected decisions are published in the *Workers’ Compensation Reporter*.

Appeal Division Caseload

It has been noted that issues or appeals considered by the Appeal Division came out of several sources, with the majority arising as appeals of Review Board decisions. The figures in Table 4.6 show the number of cases that stem from these sources since June 1991, and the accumulated backlog in June 1991. The data reflect new matters brought to the Division, and not decisions made in the respective years. For calendar years 1992–1994, an average of 2,049 new matters came to the Appeal Division annually. Between 61 and 65 percent of these were appeals of Review Board findings. The large majority of these appeals are from claimants. In 1994, for example, only 6.5 percent of Review Board findings involved appeals by employers. Employer appeals of Occupational Safety and Health determinations by the Board that lead to penalty assessments on the employer can also be appealed. About 7–9 percent of new matters were

appeals based on such determinations. Another 4–6 percent of new matters emanate from employer appeals of assessment issues. There is also a highly variable amount of appeal activity over employer relief of costs (discussed in Chapter 7).

A number of factors have contributed to the recently heightened concern by employers over their workers' compensation costs. Not surprisingly, this interest is reflected in the appellate process. Employer appeals for relief of costs (for example, where an injury would not have been expected to result in disability, save for a pre-existing injury) have been an important source of appeals, as have determinations regarding their assessments. These issues are not appealable to the Review Board. Instead, they are appealed only within the WCB. A few appeals deal also with costs charged to employers that had been unregistered.

The law enables the Appeal Division to reconsider its own decisions, or those of the former Commissioners. Such reconsiderations can occur if new evidence has arisen, or has been discovered subsequent to the Panel's hearing, which could not through the exercise of due diligence have been discovered, or on grounds that an error of law or a violation occurred of the Canadian Charter of Rights and Freedoms. Requests by the Ombudsman can also lead to a reconsideration of former Commissioner decisions. About 4–6 percent of new matters are reconsiderations by the Appeal Division.

In instances where a work injury, illness, or death results in a legal action, the Board may be asked to certify a number of matters for the court, e.g., that the injury, disability, or death of a worker arose out of and in the course of employment. The Board of Governors has assigned this responsibility for certification to the Appeal Division. It accounts for about 4 percent of new matters.

A relatively small number of other matters are also the source of Appeal Division activity, including appeals in criminal injury determinations, or in cases the cost of a worker's claim may be transferred from one class of employer to another. Such transfers can occur where a worker's injury or death was caused, or substantially contributed to, by a serious breach of duty of care by an employer from a class other than that of the worker's employer.

Approximately 90–91 percent of Appeal Division decisions are based on written submissions only. Of the 9–10 percent of decisions where an oral hearing was held, most of these were held at the Richmond office. For example, of the 140 oral hearings held in 1994, only 34 were conducted at offices other than Richmond.

The data in Table 4.6 reflect the volume of new matters brought to the Appeal Division since its inception. What must be understood, however, was the substantial and widespread dissatisfaction with the WCB over the accumulated backlog in appeals to the former Commissioners. Some of this backlog can be traced to the problems of transition as the previous system and the Commis-

sioners gave way to the changeover. In 1991 the Appeal Division inherited this backlog. It became a very high priority to decide the backlogged appeals without allowing the new appeals to remain undecided beyond the 90-day timeframe. The backlog was originally forecast to be 1,476 claims but a late rush of employer appeals for relief of costs under Section 39 helped create a backlog of 1,742 cases. Of these, 65 percent were appeals of findings made by the Review Board, primarily from claimants.

By June 1992, the entire backlog, but for 21 cases, had been decided. Moreover, from its inception the Appeal Division was meeting the 90-day time requirement on decisions from appeals begun since June 3, 1991. These achievements occurred even as newly established procedures, Appeals Commissioners, and staff were put into place. The Board of Governors committed substantial resources to accomplish these ends. As the backlog was eliminated, the Appeal Division cut back on the number of staff and somewhat on its number of Appeal Commissioners.

The Appeal Division's activity was affected as well by a spurt in employer appeals for relief of costs under Section 39(1). From December 1990 until April 1991, only 23 such appeals were made to the former Commissioners. By contrast, from May 1991 to April 1992, 871 such appeals were filed. Many of these appeals developed as a result of the work that certain consultants provided to some employers, informing them of possible opportunities to obtain relief of costs in earlier cases. Some of these consultants are former employees of the WCB. Subsequent to filing their appeals, many employers withdrew them (673 appeals) as they learned they were entitled to a manager's review, prior to having the Appeal Division process set into motion.

Section 99 of the statute states:

The Board is not bound to follow legal precedent. It's decision shall be given according to the merits and justice of the case and, where there is a doubt on an issue and the disputed possibilities are evenly balanced, the issue shall be resolved in accordance with that possibility which is favourable to the worker.

As a part of the Board, the Appeal Division must operate consistent with Section 99. It also operates within Board policy, unless that policy is in conflict with the Act or Regulations.

The data in Table 4.7 reflect the decisions of the former Commissioners for 1988 through 1990 and Appeal Division findings for the period 1992 through 1994. Decisions in three categories of cases, accounting for the large majority

of Appeal Division cases, are shown. Appeal Division findings from Review Board cases, from Occupational Safety and Health penalty assessments, and from relief of costs and assessment appeals (pooled) are shown. Most Review Board appeals were from claimants, while the other two are from employers.

The data in Table 4.7 provide several interesting perspectives. First, the volume of decisions by the Appeal Division involving Review Board findings has been consistently higher than in earlier years under the former Commissioners. The Appeal Division has generated two or three more times the number of decisions than did the Commissioners during their last three calendar years.

A second feature that stands out is the much higher allow rates for worker/dependent appeals under the Appeal Division than under the Commissioners. Note that the allow rate for worker/dependant appellants of Review Board findings rises from the range of 7–8 percent to 33–35 percent. By contrast the allow rate for employer appeals of Review Board findings fell off substantially from the 1988–1990 period to the 1992–1994 period under the new Appeal Division. It needs to be noted that Bill 27 created limited grounds for employer appeals of OSH penalties, assessments, and the like. The Appeal Division can allow employer appeals only on grounds of “error of law or fact or contravention of a published policy of the governors.” The former Commissioners were not similarly bound and could reconsider such decisions on their discretion.

The very clear picture that emerges in Table 4.7 is that the chances for winning an appeal were higher for the employer than for the worker/dependent under the former Commissioners, and that this has substantially been reversed under the Appeal Division. The number of appeals by workers has always been much higher than by employers. The higher success rate by claimants has occurred as the number of appeals by them seems to have increased.

Table 4.8 shows the allow-denial rate for appeals in Occupational Safety and Health penalty cases. Across time, the employer denial rates seem to rise. The rather high rate of denials may account for the decline over time in the number of employer appeals. The allow and the denial rates in assessment and relief of cost appeals have been stable over time. Employers win their appeals in about one of every six cases. The number of these appeals has also declined over time.

Decisions of the Appeal Division are not entirely final or conclusive. Parties that are dissatisfied with a decision may ask that it be reconsidered by the Chief Appeal Commissioner. Further, if the issue in dispute is a medical issue, there may be a subsequent request for a Medical Review Panel.

Though a party may seek satisfaction in the courts, the likelihood of this is remote. By March 1995, there had been only ten judicial reviews of Appeal Division decisions since June 1991 in the Provincial Supreme Court, with nine of

the petitions dismissed thereon. The tenth was dismissed at the Court of Appeal. This is consistent with Section 96(1) of the Act which states that the decisions of the Board are “final and conclusive and not open to question or review in any court.”

From June 1991 until January 10, 1995, 288 Medical Review Panel certificates had been issued on appeals from Appeal Division findings. Another 371 such cases were proceeding to a Medical Review Panel. Thus, of approximately 4,500 Appeal Division decisions in Review Board cases from June 1991 until the end of 1994, about 15 percent went on to a Medical Review Panel.

Prior to June 1991, decisions of the Review Board could be referred to the former Commissioners for their review. The matter was a highly sensitive one. When a claimant was able to have the Review Board reverse a Board Officer's decision, they would likely be upset to learn that an adjudicator would not implement that decision, but would refer it for further consideration to the Commission. The matter was not eased when the Commissioners were unable to deliver prompt decisions. At its height, there were 398 such referrals in 1987.

Bill 27 imposed tighter restrictions on the grounds for referral to the Appeal Division, and it required that the President/CEO sign-off on them. From June 1991 to the end of that year, there were eight referrals. In the next three calendar years, there were seven referrals *in toto*, by the President/CEO to the Appeal Division. The frequency with which these referrals have occurred is significant. Such referrals are to be used, according to Section 96(4) where the Board believes the Review Board's decision is based on error of law or contravention of a published policy of the Governors. Where there is a conflict in interpreting the Act between the Board and the Review Board, the law places resolution of the matter in the hands of the Appeal Division.

Observations

It is beyond the bounds of an Administrative Inventory to evaluate the quality of the decisions by the Appeal Division. Some persons will search the outcomes of the Appeal Division's findings for confirmation of their views regarding its ideological leanings, if any. Conflicting interpretations almost always can arise from analyses of the same set of data. We would urge the reader to consider a few points.

The Appeal Division does not make decisions as a monolith. Instead, well over 1,500 findings are made each year, with many of them decided by 3-person panels. Given the quantity of decisions and the number of panel decisions, it is unfair to either entirely credit or blame the Chief Appeal Commissioner for the outcomes in most cases. This is not to rule out the possibility that some

Appeal Commissioners may be ideologically oriented, and indeed, the structure of the representational panels could suggest that to some critics. The representational panels do serve to assure some variety of experience among Commissioners, however.

Some unhappiness with the Appeal Division findings may actually be a result of dissatisfaction with either the statute or the policies of the Board of Governors. As such the Appeal Division and its decisions can serve as a lightning rod. In such instances those that quarrel with the Division might better seek to recast either the law or its application as developed by the Governors.

The impact of the Appeal Division extends well beyond the numbers of its reported findings. On a day-to-day basis, the truly critical impact of the Appeal Division is where it affects the decisions made by Board Officers. In theory, these individuals simply make decisions in accordance with the policies of the Board, such as those found in the *Rehabilitation Services and Claims Manual*. It seems inevitable, however, that some officers, adjudicators, and managers allow their decisions to be shaped by the findings that flow down from the Appeal Division. We noted marked differences of opinion on the extent to which Review Board or Appeal Division reversals impact subsequent adjudication decisions.

The Appeal Division has sought feedback from the community on its practices in two different ways. In May and June of 1994, Appeal Commissioners met with 13 groups representing both worker and employer interests. Information that the Appeal Division obtained through these sessions resulted in some procedural modifications by the Division.

In September 1994, the Appeal Division had a questionnaire sent to 230 persons who had some dealings with the Division. There were 104 respondents that completed the survey. Though the respondents were anonymous, they were identified in terms of their interest group. The number of respondents, especially on the employer side, was small. Ten respondents were employers, eight others were primarily or solely employer representatives, one other representative had acted both for employers and for workers, and five respondents are described as "other." The Division was seen as performing in a satisfactory or very satisfactory manner by most worker representatives and most employer representatives. However, about one-half of individual worker respondents and 40 percent of individual employer respondents found that overall, the Division's performance was not satisfactory. These results are troubling, but suffer from both the low response rate indicated and the lack of comparative standards from other jurisdictions.

Earlier in this chapter, the issue of whether or not the Appeal Division may be “making policy” was raised. It seems clear that the function of the Appeal Division, as it relates to its role in interpreting WCB policies and practices and the underlying statute, is viewed very differently by contending parties. One would suppose that so fundamental an issue would have been decisively resolved, or clarified by now. Unfortunately, the matter remains contentious, and the source of that can be traced to several elements.

First, the Board of Governors were divided along interest lines. As such, no consensus was reached that could have brought about a recommendation for legislative action that might eliminate the source of controversy. Second, the suspicions over the person made the Chief Appeal Commissioner enhanced the significance of the issue. For those who were wary of the appointee at the outset, any indication of policy creation by the Appeal Division was viewed with alarm. Complicating the issue is the relationship of the Review Board to the Appeal Division and the WCB.

In some jurisdictions, an issue as fundamental as this one might eventually be resolved in the courts. That is not so likely in British Columbia. Until a way is found for the matter to be clarified legislatively, the contending parties will continue to be frustrated with each other’s position.

Medical Review Panels

In a dispute over a medical issue a worker or an employer may appeal a WCB decision to a Medical Review Panel. The appeal may be made subsequent to a decision by a Board Officer, or a finding of the Review Board, or the Appeal Division. Though relatively few injured workers or dependant survivors have any reason to utilize the Medical Review Panel process, it represents a highly significant avenue of appeal where disputes occur over medical issues. Since the determination of a panel is decisive on the matter(s) in dispute, it is the last opportunity for an appellant.

In September 1991 the Board of Governors commenced an inquiry into the Medical Review Panel process. Dr. Leonard C. Jenkins was commissioned to prepare a report on the process, which was presented to the Governors on August 17, 1992. The report contained 132 recommendations, 70 of which were administrative and 52 would have required either a statutory or policy change. Public response to the recommendations was sought. Public hearings were held and submissions were invited, approximately 400 of which were elicited. A 3-person committee drawn from the organized labour sector, the employer community and the WCB staff helped develop the policy changes that the Board

of Governors approved in May 1995. As of mid 1995, work continues on any possible statutory changes.

In October 1991, the Board of Governors took over the administration of the Medical Review Panel from the Appeal Division. A registrar was appointed and the unit now reports to the Board of Governors through the Chair. Initially, the registrar (Dr. Jenkins) was employed on a part time basis. However, in 1994, a new registrar was appointed to serve on a full time basis.

Beginning in 1991, the process began to experience backlogs and significant delays, as it had several years earlier. The staff of the unit was expanded, but delays worsened. A number of the post-Jenkins report changes have been aimed at reducing the backlog. A significant step, it is believed, has been to modify a past practice of the unit, to prepare a statement of foundational non medical facts for the use of the panel. This step is not required by statute, and occupied significant staff resources, while contributing substantially to the delay in the process. One of the changes in policy in May 1995 is to declare that such a statement is expected only in "unusual cases."

Procedures

In order to be allowed to appeal a decision to a Medical Review Panel, there must be a *bona fide* medical dispute. That determination is usually left to the worker's attending physician who submits a letter (certificate) attesting to the presence of a dispute to accompany the request for the Medical Review Panel. The certificate is evaluated by a medical appeals officer of the WCB. It is either accepted or the worker is given further opportunity to procure a certificate indicating that there is a good faith medical dispute and providing sufficient particulars to define the question at issue. If the WCB finds that there is no *bona fide* medical dispute, that determination may be appealed to the Review Board. Where a Medical Review Panel is warranted, a set of 10 questions is given to the Medical Review Panel with instructions that the panel limit its response to those issues only. The panel is absolutely bound by the WCB's non medical findings in the case.

The Lieutenant Governor in Council appoints physicians to serve as Chairs of Medical Review Panels. Currently, 16 persons serve in this capacity. When the Board accepts an appeal for a Medical Review Panel, it sends a list of specialists practising in the field in which the medical dispute occurs to the worker and to the employer, asking them each to choose a specialist. The party requesting the panel must exercise that choice within eight days, or no further action

is taken on the matter. If the party that did not request the panel, usually it is the employer, does not choose a specialist from the list within eight days, a selection is made by the Ministry of Skills, Training and Labour.

The Panel Chair and the two specialists meet the worker, customarily at the Chair's office. The Panel has access to the Board's non medical findings, all the medical information, and any reports contained in the claim file. They each physically examine the worker. A medical history is usually taken as well. The Panel is able to request that other tests be conducted if they believe them to be necessary. The three physicians then discuss their findings, and a report for the file is prepared by the Chair. The Chair also drafts the certificate and distributes it to the specialists for their approval. Only two of the three Panel members need agree. This certificate contains the answers to the questions which were submitted to the panel.

The certificate of the Medical Review Panel is returned to the WCB for review. Since May 31, 1991, Claims Adjudicators have been responsible for reviewing certificates to determine that the panel has not overstepped its jurisdictional grounds. If the certificate is within the Panel's jurisdiction, the issue is resolved, decisively. Section 65 of the Act states:

A certificate of a panel under Section 58 to 64 is conclusive as to the matters certified and is binding on the Board. The certificate is not open to question or review in any court, and no proceedings by or before the panel shall be restrained by injunction, prohibition or other process or proceeding in any court or be removable by *certiorari* or otherwise in any court.

Medical Review Panel Caseload

The data in Table 4.9 indicate that the number of new applications for a Medical Review Panel showed sizeable increases in 1991-93 over the years 1987-90. Two factors may account for this shift. Between July 1988 and June 28, 1991, no appeal to the Medical Review Panel was permitted directly from a Review Board finding. Thereafter, appeals to a Medical Review Panel could be taken if a party sought to challenge a Review Board medical finding. The second change that led to an increase in applications was the volume of decisions made by the Appeal Division as they eliminated the backlog in cases that had been built up at the Commissioners level and reconsidered certain claims previously decided by the Commissioners.

In 1991 and 1992, 1,074 new applications were received but only 823 were considered during those years. Thus, a backlog developed at the front end of the Medical Review Panel process that was partially cleared out in 1993. In that year 526 new applications were received but 807 applications were considered. In 1994 the number of applications considered again exceeded the number of new applications received, helping to somewhat relieve the inventory that had developed previously.

As applications are considered, they can be accepted or rejected, and some are withdrawn or simply filed too late. The applicant has 90 days in which to submit an appeal from the WCB, WCRB, or Appeal Division decision. Exception to this exist defined in Governors' policy, and no such limit applies to surviving dependants. In recent years the proportion of claims withdrawn or found to be not timely, as a percentage of claims considered that year has fluctuated widely. It is notable that this proportion was considerably lower in 1993 (9 percent) than in the previous five years and in 1994.

Also in 1993, the number of cases accepted for review by a Medical Review Panel, as a proportion of cases accepted and rejected that year hit a high water mark of 82 percent. Though 1993 was the year when the front end of the Medical Review Panel appeal process was relieved of its backlog, it created an inventory problem for the rest of the system. From 1991 to 1993, 1,039 claims were accepted for a Medical Review Panel, but only 613 Panel decisions resulted. In 1994, 343 new appeals were accepted yet 289 Panel decisions were forthcoming.

The growing backlog in the Medical Review Panel process resulted inevitably in a lengthening of the time to process an appeal. Table 4.9 indicates the number of days to process a Medical Review Panel appeal, from the date an appeal is initially received until the date that the decision of the Panel is implemented. It reveals that the number of days to process such an appeal had declined from 1987 through 1990, but reversed in 1991 and has grown alarmingly since. By 1994, the average time to process the appeal had grown to 723 days (24 months).

Though some officials at the Board believed that the delays were due to the scheduling of the examination and to tardiness on the physicians' part in reporting, the data suggest otherwise. The process was analysed based on time flows both in 1991 and 1994 (see Table 4.10). For example, in 1994, 73 percent of the 723 days that the entire process occupied, passed *before* the scheduling of the panel. From the date the Panel was scheduled to the receipt of the Panel's certificate, the average time taken in 1994 was 114 days compared with an average of 110 days in 1991.

In fact, the enormous slippage in the processing of Medical Review Panel appeals from 1991 to 1994 occurred in the time elapsed between the determination by the Board that there was a *bona fide* medical dispute and the scheduling of the Panel. In 1991, this period averaged 125 days compared with 384 days in 1994. It must be observed that the entire processing time had been as low as 242 days in 1990. As of April 30, 1995, 570 active applications were at some stage of the Medical Review Panel process. Fully 68 percent of these applications (387) had been accepted for a Panel but were not beyond the state of Panel scheduling.

Obviously, there are many factors that can contribute to the lack of speed in the Medical Review Panel process. Identifying the available specialists and a time when the three physicians can meet is one of them. Once a draft of the Panel's findings is prepared by the Chair, it must be circulated to the specialists, possibly several times, until each physician is satisfied with it. Yet, as noted above, the major source of delay occurs in the Board's Medical Review Panel office, where a decision must be made that a *bona fide* medical dispute exists, and in preparing the non medical information for the Panel.

In the hope of speeding up the entire process, the policy was changed in May 1995 to end the practice of regularly preparing a statement of non medical facts. In the future this will be done only in "unusual cases." The measure has enabled the Medical Review Panel Department to reduce the number of Medical Appeals Officers from six to one.

The costs of the Medical Review Panel are described in Table 4.11. The total cost in 1994 was 59 percent above the 1993 mark of \$1,218,779, and the average cost per Panel was 29 percent above the 1993 average cost of \$5,163. In mid 1995, each specialist on a Panel received a fee of \$471.79 per appeal and the Chair was remunerated at a rate of \$140.68 per hour.

A recent survey of persons with appeals in the period January to November 1994 was undertaken in order to determine satisfaction with the Medical Review Panel process. Of 378 persons surveyed, usable responses were obtained from 141 (37 percent), 64 percent of whom were workers. Fifty-two percent of respondents were not satisfied with the specific Panel decision and 50 percent indicated that they were not satisfied in their overall assessment of the Medical Review Panel Department's performance.

Observations

The outcomes of the Medical Review Panel process have shown that the appellant has approximately a 50 percent chance of winning at this level. In 1994, the decision being appealed was upheld in 50 percent of the Panels, rejected in 47 percent of the cases, with some partial agreement in 3 percent of the cases (Table 4.12).

What accounts for the fact that the WCB is found to be wrong in about one half of these medical disputes? In 1994, 61 percent of the cases to a Medical Review Panel were appeals of Appeal Division decisions. Hence, the matter had likely been previously decided by a claims adjudicator, a manager's review, and the Review Board prior to the decision of the Appeal Division. Yet only one half the time was that final decision upheld. Several possible reasons for this outcome could contribute to this record:

- The Panels may be using criteria that differ from those used by the WCB and the Review Board. Were this the case, it might result from a lack of familiarity with the standards applied, presumably uniformly, by the WCB's own Medical Advisers. Conceivably, it might also reflect a stricter, some might say a more harsh approach, by the Board's doctors.
- In some cases the WCB's Medical Adviser has not examined the worker and may rely on the file only for their decision. Possibly the Medical Adviser's examination is qualitatively different from that given by the Panel. Moreover, the worker's condition may change prior to the Panel.
- It could reflect upon the procedures used to select the specialist. We were told that the worker representatives often know which specialists to select as being more inclined to support an appellant worker.
- Some persons believe that appellants become more adept as they proceed up the appeal process ladder. That is, workers learn what doctors need to hear in order to accept their appeal.
- Physicians may be reluctant to deny an appeal where there is any evidence that may support the appellant, since they know that their decision is decisive.

The Jenkins report considered the variation in the agreement or disagreement rate by the Panel Chairs over the period 1987 to February 1992. In that period as well, 50 percent of the Panel decisions did not confirm the Board's decision. Nine of the Chairs participated on 95 or more Panels in that period. One member had a disagree rate of 34 percent while another had a disagree rate of almost 61 percent. Only three of the nine had disagreement rates that fell between 45 and 55 percent.

Unfortunately, we are not in a position to judge whether one or more of these or other reasons are related to this seemingly high rate of reversal of Board medical decisions. And perhaps the rate is high simply because only those claimants able to obtain physician certification of the presence of a medical dispute are considered in the rate. When viewed by the standard of all medical decisions made by the WCB, reversals in the range of 100 — 150 cases per year may suggest that there is no underlying problem here.

Appeals Beyond the Board

Applications for judicial review can be made to the court system on the grounds that WCB decisions have deprived the litigant of his/her right to “natural justice” in the WCB administrative process. These applications would be to the British Columbia Supreme Court and the British Columbia Court of Appeals. In practice these appeals are not common, nor are they successful as observed earlier in this chapter. The courts have said that so long as the WCB acts within its jurisdiction, it will not be overturned, even where the decision may have been wrong. WCB decisions are overturned where the court finds that the WCB has failed to comply with principles of natural justice, or if it has rendered a patently unreasonable judgment.

Other Representation

Not all disputes in workers’ compensation cases necessarily lend themselves to appeals. Parties in claims may be dissatisfied with delays in resolving issues, uncertainties as to entitlements, irritation with being unable to speak to the appropriate Claims Officer, Adjudicator or manager, personal slights or seemingly prejudicial statements, insensitivity, or a host of other sources of frustration or anger. In his 1966 Commission of Inquiry on the Workmen’s Compensation Act, Justice Charles W. Tysoe recommended that the Board seriously consider the establishment of a Complaints Department to deal with the various grievances that occur in dealing with any large scale organization. The Board created an office to handle complaints but disbanded it later when the offices of Workers’ Advisers and Employers’ Advisers were created. Since then each of these offices has served its respective constituents, along with the office of the Provincial Ombudsman.

In 1968, amendments to the Act created the Workers’ Advisers Office (WAO) to assist workers or dependants with their claims. Aside from providing assistance directly to claimants, the office provides training for union persons who

are themselves worker representatives. An Employers' Advisers Office (EAO) was created by statute in 1974, as a counterpart to the Workers' Advisers Office. It assists employers on issues relating to Occupational Safety and Health penalties, assessments, and claims for workers' compensation.

Both of these offices are financed by the Accident Fund. In 1994 the Workers' Advisers Office and the Employers' Advisers Office were funded by the WCB in the amounts of \$3.1 million and \$1.3 million respectively. The Employers' Advisers Office is primarily housed in Richmond, with small offices in Prince George and Victoria. The Workers' Advisers Office also has offices in these locations as well as in Kamloops and Nanaimo. At the end of 1994, the Employers' Advisers Office had a staff of 17, up from 9 persons at the end of 1990. The number of staff at the Workers' Advisers Office rose from 21 to 40 over the same period.

A common feature for both offices is that they have faced very substantial growth in the demand for their services, forcing both to find a way to ration their relatively scarce services. Reasons for these increases differ. Although various factors contributed to the growth in demand for Employers' Advisers Office services, a significant portion simply reflects the much greater sensitivity by employers over the past four years to workers' compensation matters in the Province. Additionally, many new employers have been covered recently, some of whom have no familiarity with workers' compensation. The enactment of Bill 63 added about 20,000 new employers, mostly small ones (about 150,000 workers), to the system. Some new OSH regulations protecting farm and fishery workers also generated needs for services by smaller employers.

A number of factors have contributed to the growing demand for the services of the Workers' Advisers Office as well, including the increasing awareness of its existence and Bill 63. Indeed, the Workers' Advisers Office no longer advertises as a way to inform claimants of its existence. Another source of growth in activity has been the reduction in injured worker advisory services by labour unions. Some unions have found it difficult to afford staffing such positions. Only a few years ago, most unions preferred that it be union representatives that assisted workers with any workers' compensation claims. As some unions have changed their views on this, it has increased the advice and assistance demands on the Workers' Advisers Office, although the office has had to refuse to take representation activities for union members.

Though both the Employers' Advisers Office and the Workers' Advisers Office have had to contend with increased activity, that grew at more rapid rates than did their staffs, the responses by them have been quite different. The Employers' Advisers Office has dealt with scarcity by concentrating its resources

on being available, promptly, to telephone inquiries. For example, in 1991–92, Employers' Advisers attended 257 hearings and prepared 698 written submissions. In the most recent year, 1994–95, the number of these activities had dropped to 50 hearings and 425 written submissions. In addition to these shifts, the Employers' Advisers Office encourages and assists employers, especially the larger ones, to help themselves.

By contrast, the Workers' Advisers Office has increased the number of hearings attended and the number of its written submissions. In 1990–91, Workers' Advisers prepared 206 written submissions and were in attendance at 82 hearings. In 1994–95, these numbers had grown, respectively, to 1,041 and 278. The tradeoff, however, for the Workers' Advisers Office is that a claimant may need to wait for a week to have a telephone call returned. The Workers' Advisers Office is under increasing pressure from injured workers or dependants to be present with an otherwise unrepresented worker or a dependant at a hearing where the employer, or the employer's representative, will be present. Therefore, increasing employer attention to workers' compensation matters has contributed to demands upon the Workers' Advisers Office as well.

Aside from the formal appeal structure, individuals, customarily workers or their dependants, that have some dissatisfaction with the WCB may seek the assistance of the Office of the Ombudsman. In some instances the individual simply needs to be informed that the matter has been settled and that no further action can be taken. In some instances the Ombudsman assists the person by informing them of their rights and the next step that can be taken by them. There are cases where the Ombudsman will contact the Board in order to make inquiries on behalf of the person, or it may ask that the issue(s) in question be reconsidered.

In 1990, the Ombudsman reported that it had 772 complaints about the Workers' Compensation Board, or 9.8 percent of all the complaints it received. In 1994 the number of complaints regarding the WCB were 1,031 or 10.2 percent of all complaints closed. The most common complaints are about the delays in making decisions regarding claims, and the inability to learn about the status of a claim. A significant number of complaints occur when claimants are unable to understand what has been communicated to them. WCB managers are quite responsive to any inquiry raised by the Ombudsman's office; they respond promptly to such contacts.

Aside from the three offices created by law to assist workers and employers in coping with the workers' compensation system, persons wishing to do so have access to private lawyers. WCB policy prohibits paying legal fees in workers' compensation cases, but common knowledge suggests that one-third of the re-

covery is the conventional fee. Unlike most jurisdictions in the United States, there is no trial bar domination of workers' compensation adjudication or appeals. Part of the reason for this may be historical, but much of it is likely due to the strong posture in the Act and by the WCB that it should administer the law in an inquiry, rather than an adversarial, manner. The prohibition of legal fees also surely plays some role. It is apparent that the provision of Workers' Advisers, both by unions and by the Provincial government, along with an active office of the Ombudsman limit the perceived need to retain private lawyers to redress the inevitable errors of a system as large and complex as the workers' compensation system of British Columbia.

Table 4.1 Appeal Activity at the WCRB

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
Appeals Rec'd	2,922	4,090	4,090	5,082	4,045	3,921	4,248	4,966	5,636	6,749	7,164	6,624	7,564	8,780
Findings	2,250	2,746	2,867	3,111	2,917	3,259	4,013	4,154	4,141	3,900	4,360	4,932	4,693	3,714
Summaries	352	501	748	903	757	788	1,173	1,221	1,233	1,353	1,623	1,798	2,276	3,106
Total	2,602	3,247	3,615	4,014	3,674	4,047	5,214	5,375	5,374	5,253	5,983	6,730	6,969	6,820

Source: Workers' Compensation Review Board

Table 4.2 Relative Measures of WCRB Appeal Activity

	(1) Appeals Rec'd/ New Claims Registered at WCB	(2) Appeals Rec'd/ Wage-Loss First Paid	(3) Findings/ New Claims Registered at WCB	(4) Findings/ Wage-Loss First Paid
1981	1.5%	3.4%	1.1%	2.6%
1982	2.6%	5.8%	1.7%	3.9%
1983	2.7%	6.5%	1.9%	4.5%
1984	3.4%	8.5%	2.1%	5.2%
1985	2.5%	6.5%	1.8%	4.7%
1986	2.5%	6.2%	2.1%	5.2%
1987	2.5%	6.4%	2.4%	6.0%
1988	2.6%	6.6%	2.2%	5.6%
1989	2.7%	7.0%	2.0%	5.1%
1990	3.1%	7.7%	1.8%	4.5%
1991	3.5%	8.8%	2.1%	5.4%
1992	3.3%	8.2%	2.5%	6.1%
1993	3.9%	9.5%	2.4%	5.9%
1994	4.4%	10.8%	1.9%	4.6%

Source: Developed from data provided by Workers' Compensation Board and Workers' Compensation Review Board

Table 4.3 Findings, Allowed and Denied Appeals

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994
WORKER R&R*														
Allowed	241	380	385	443	482	514	437	332	328	306	296	375	440	302
Denied	327	651	831	929	936	954	839	799	769	643	544	647	771	608
Allow Rate	42.4%	36.9%	31.7%	32.3%	34.0%	35.0%	35.0%	29.4%	29.9%	32.2%	35.2%	36.7%	36.3%	33.2%
WORKER OH*														
Allowed	779	819	674	625	669	883	1,151	1,281	1,350	1,398	1,678	1,780	1,337	1,032
Denied	787	772	850	1,003	755	841	1,481	1,652	1,627	1,492	1,706	2,034	2,006	1,663
Allow Rate	49.7%	51.5%	44.2%	38.4%	47.0%	51.2%	43.7%	43.7%	45.3%	48.4%	49.6%	46.7%	40.0%	38.2%
EMPLOYER R&R														
Allowed	12	16	25	12	10	10	8	9	5	3	6	5	22	16
Denied	37	48	57	60	45	31	55	36	38	28	23	35	50	33
Allow Rate	24.5%	25.0%	30.5%	16.7%	18.2%	24.4%	12.7%	20.0%	11.6%	9.7%	20.7%	12.5%	30.6%	32.7%
EMPLOYER OH†														
Allowed	18	25	25	14	8	6	10	14	4	15	12	20	26	29
Denied	39	35	21	25	12	20	30	31	20	15	35	36	41	31
Allow Rate	31.6%	41.7%	54.3%	35.9%	40.0%	23.1%	25.0%	31.1%	16.7%	50.0%	25.5%	35.7%	38.8%	48.3%

*R&R — Read and Review

*OH — Oral Hearing

Source: Workers' Compensation Review Board

Table 4.4 WCRB Output, 1981 — 1994

Year	Number of Panels	Appeals Received Per Panel	Findings Per Panel
1981	6	487	375
1982	7	584	392
1983	7	584	410
1984	7	726	444
1985	7	578	417
1986	12	327	272
1987	14	303	287
1988	14	354	297
1989	14	403	296
1990	14	482	279
1991	14	512	311
1992	14	473	352
1993	15.5	488	303
1994	15	585	248

Source: Workers' Compensation Review Board

Table 4.5 Appeal Commissioners and Staff Position

	Full Time Non Rep.	Part Time Non Rep.	Full Time Labour	Part Time Labour	Full Time Employer	Part Time Employer	Staff
June 1992	10	3	2	1	2	1	37
Dec. 1992	8	2	2	1	2	1	25
Dec. 1993	9	2	2	1	2	1	26
Dec. 1994	9	2	2	1	2	1	21

Source: Annual Reports, Appeal Division

Table 4.6 New Matters Brought to the Appeal Division

	New Matters					
	1994	1993	1992	1991-92	Backlog	
Appeal from Review Board Findings	65%	61%	61%	47%	65%	
Prevention	9%	7%	9%	8%	13%	
Employer Relief of Costs & ERA	7%	17%	11%	28%	15%	
Assessments, incl. S.47(2)	7%	6%	5%	5%	2%	
Reconsider - Ombudsman Sec. 96(1) and Sec. 96(2)	5%	4%	6%	5%	3%	
Certificates	4%	4%	4%	4%	1%	
Review Board Referrals, Criminal Injuries, Transfer of Claim, Sec. 10(8)	3%	1%	4%	3%	1%	
Number of Cases	1,860	2,296	1,992	2,262	1,742	

Source: Annual Reports, Appeal Division

Table 4.7 Review Board Appeal Decisions

Review Board Cases*							
By Worker/ Dependent	1988	1989	1990	1991-92	1992	1993	1994
Allow	7%	8%	8%	N/A	33%	34%	35%
Deny	84%	84%	86%	N/A	53%	55%	52%
Partial	8%	6%	5%	N/A	13%	11%	13%
Miscellaneous	1%	2%	1%	N/A	1%	0%	1%
Decisions	399	429	376	N/A	1,103	1,230	1,000
By Employer	1988	1989	1990	1991-92	1992	1993	1994
Allow	24%	36%	53%	N/A	16%	16%	16%
Deny	67%	54%	33%	N/A	75%	83%	79%
Partial	7%	8%	14%	N/A	7%	1%	4%
Miscellaneous	2%	2%	0%	N/A	2%	0%	0%
Decisions	45	72	36	N/A	122	74	67
Worker/ Dependent & Employer (Total)	1988	1989	1990	1991-92	1992	1993	1994
Allow	9%	12%	12%	29%	31%	33%	34%
Deny	82%	79%	81%	58%	55%	56%	53%
Partial	8%	7%	6%	9%	13%	10%	12%
Miscellaneous	1%	2%	1%	3%	1%	1%	1%
Decisions	444	501	412	1,529	1,225	1,304	1,067

* Decisions for 1988, 1989 and 1990 are by the former Commissioners. Decisions for 1991 – 92 are for the first year of the Appeal Division. 1992 – 94 are calendar years for the Appeal Division.

Source: Annual Reports, Appeal Division and documents supplied by WCB

Table 4.8 Employer Appeal Decisions

	1992	1993	1994
I. OSH Penalties Cases			
Allow	30%	12%	14%
Deny	62%	84%	84%
Partial	7%	4%	3%
Miscellaneous	1%	0%	0%
Total Decisions	301	159	140
II. Assessments and Relief of Cost Cases			
Allow	18%	17%	15%
Deny	76%	79%	81%
Partial	6%	4%	3%
Miscellaneous	0%	0%	0%
Total Decisions	297	200	151

Source: Annual Reports, Appeal Division

Table 4.9 Medical Review Panel Activity

	1987	1988	1989	1990	1991	1992	1993	1994	1/1/95- 4/30/95
New Applications Received	398	433	369	397	500	574	526	452	143
Applications Considered	321	581	415	454	405	418	807	535	152
Accepted	240	316	190	221	232	208	599	343	91
% Accepted*	79%	74%	66%	63%	76%	76%	82%	74%	73%
Rejected	65	110	98	129	74	64	132	119	34
Out of Time/ Withdrawn	16	155	127	104	99	146	76	73	16
Decisions	148	358	291	250	165	212	236	289	118
Time to Process (Days)	464	434	319	242	400	486	637	723	—

* As a percentage of Accepted plus Rejected

Sources: WCB Annual Reports, Data from Medical Review Panel Administration

Table 4.10 Number of Days and Percent of Total Process Time

Days From:	Days	1991	Days	1994
Receipt of Application to Receipt of Physician's Enabling Certificate	40	10%	61	8%
Enabling Application to Decision on <i>Bona Fide</i> Medical Dispute	85	22%	87	12%
<i>Bona Fide</i> Medical Dispute to Scheduling the Panel	125	31%	384	53%
Time Panel Schedule to Holding the Panel	70	17%	74	10%
From Panel Date to Receipt of Certificate	40	10%	40	6%
Implementation of the Certificate	40	10%	77	11%
Average Number of Days	400		723	

Source: Medical Review Panel Administration

Table 4.11 Medical Review Panel Costs, 1994

	Total	Cost per Panel
Capital	\$18,090	\$63
Operating	\$1,066,810	\$3,691
Chair and Specialists Fees	\$838,415	\$2,901
Total	\$1,923,315	\$6,655

Source: Medical Review Panel Administration

Table 4.12 Medical Review Panel Outcome

	1987	1988	1989	1990	1991	1992	1993	1994	1/1/95- 4/30/95
Agree	39%	37%	39%	44%	41%	43%	46%	50%	52%
Disagree	49%	51%	49%	47%	52%	50%	48%	47%	48%
Other	11%	13%	12%	9%	7%	7%	5%	3%	0%

Sources: WCB Annual Reports, Data from Medical Review Panel Administration

Chapter 5

BENEFITS

In this chapter we examine the types and levels of benefits provided to workers who have suffered a disabling injury, or their survivors in the case of a work-related fatality. British Columbia pays benefits that are found in most jurisdictions in North America, that is, health care, short term disability, long term disability, disfigurement, survivor's, and rehabilitation benefits. Most, though not all, benefits for compensable injuries or illnesses are associated with the worker's level of earnings at the time of the injury.

Establishment of the Wage Rate

Though most indemnity benefits are tied to the level of the employees wage at the time of injury, the statute requires that WCB set maximum and minimum levels of earnings that are to be used in calculating the compensation rate. The basic compensation rate is 75 percent of average earnings for temporary total disability. However, where a worker's earnings exceed the maximum, benefits are based on the maximum earnings level and not on actual earnings. Where the benefit rate would fall below the minimum set by the WCB, compensation is based on the minimum, although the benefit cannot exceed 100 percent of the worker's earnings level.

The maximum wage level is set annually by the WCB. (See Table 5.1) Prior to the end of each calendar year, the WCB sets the maximum rate for the coming year using a formula that is applied to the annual average of wages and salaries in the Province for the year preceding the one in which the determination is made. The formula is the ratio

$$\frac{Y_T}{Y_B} \times \$40,000 = \text{MAX. WAGE}$$

where Y_B was the average of wages and salaries in 1984, and Y_T was that average in the year prior to the one in which the maximum rate is calculated. The maxi-

imum wage level is tied to annual average provincial wage levels, lagged by one year, and the minimum is linked to semiannual changes in the consumer price index. Thus, the relationship between the changes in the maximum and minimum benefits is a close but not a constant one.

From 1980 to 1995, the maximum weekly wage rate rose by 7.5 percent annually, considerably more rapidly than the inflation rate over the period. From 1981 through 1994, the consumer price index rose by 4.5 percent per year. In 1995, the maximum weekly benefit, \$754 per week appears to be the highest in North America. (Recall that only those workers earning \$52,400 or more per year could collect that maximum.) However, if one adjusts for the exchange rate that existed in mid 1995, (\$1 Canadian = \$0.75 U.S.) the maximum weekly benefit would fall below that of eight U.S. jurisdictions. Aside from Alaska, all the other U.S. jurisdictions with higher weekly maximum benefits are in the eastern part of the U.S. See Chapter 8 for a more detailed comparison of maximum benefit rates.

Since some compensation benefits are based on the worker's previous earnings, the WCB must determine precisely what those earnings were. Though the issue may be a simple one in most cases, there are many opportunities for questions to arise. The statute gives the Board considerable latitude in determining the average earnings to be used. Section 33(1) does set the criterion, however, that the decision be "...as may appear to the Board best to represent the actual loss of earnings suffered by the worker by reason of the injury, but not so as in any case to exceed the maximum wage rate..."

Under most circumstances, the WCB follows a two stage process to set the average earnings level. Where a worker sustains a compensable injury or illness, the WCB uses the actual wage rate at the time of the injury, be it reported as a daily, weekly or annual rate. (The WCB will convert this to a weekly rate.) If the worker has two jobs, the lost earnings from both employments are used, subject to the wage maximum. If it appears that the period of compensation will go beyond eight weeks, or that a permanent disability will result, the Claims Adjudicator in conjunction with the Disability Awards Department, will recalculate the worker's earnings level, to take effect after the eighth week of benefits.

The wage rate used for these longer term cases is meant to represent the long term earnings of that worker. Typically, the WCB will use the average of earnings for the one year period prior to the injury. To do that, the Claims Adjudicator will ask for the worker's pay stubs, copies of T-4s, information from tax authorities and/or employers. The purpose behind this is to meet the legislative requirement that the earnings "represent the actual loss of earnings" as compared to what the worker might have been paid on the day of injury.

A number of situations usually will produce significant differences between the immediate wage and average earnings level used in the longer term cases. Casual workers and seasonal workers may have substantial differences between their annual incomes and the rate of pay at the time of injury. Persons who have experienced unemployment in the period prior to the injury may also find a significant change as their wage is reestimated. However, if the Claims Adjudicator believes that any unemployment in the year preceding the injury would not likely recur, the flexibility exists to allow the adjudicator to adjust the estimate so that it best represents the worker's likely loss of earnings. For example, the Claims Adjudicator may wish to consider the person's prior earnings for a period farther back than one year. This is likely to be used where an economic downturn may have produced an anomalous pattern of earnings for that worker in the year prior to the injury.

If the worker is an apprentice or a learner, adjustments in the average earnings can be made to take account of any scheduled increase in income that would have been earned in the absence of the injury. Where the injured person is a new entrant to the labour force, the adjudicator uses the wages earned in the 1 — year period, or more, prior to the injury of a person in the same or similar grade or class of employment. In instances where the employee has had a recent adjustment in his/her wage rate that appears to be a permanent one, the adjudicator can use the average earnings level for a period of three months prior to the injury. In all cases, the goal is to use that level of earnings that represents the likely loss of earnings that the worker sustains because of a compensable injury.

The WCB will also include in its calculation of average earnings, the value of certain fringe benefits that may have been lost, such as room and board and vacation pay. It does not include the value of any unemployment insurance benefits paid during the period under review.

Reopened claims occur rather frequently in British Columbia, particularly in cases involving lifetime pensions. If a claim is reopened within three years of the injury for temporary benefits, the wage at the date of injury or the eight week review is used, as adjusted for CPI changes. Where three years or more have passed, a new earnings review will be conducted. Where a pension is being paid, the earnings level may be reconsidered for purposes of the pension where a claim is reopened more than three years from the time of the injury.

The Board is able to set a wage for those persons injured while employed as volunteer workers. For certain classes of volunteers, the Board has established a schedule of hypothetical "wages." For persons who have purchased insurance from the Board under the Person Optional Protection program, the Board uses the level of wage-loss protection purchased by the insured, and not the actual

loss of earnings. However, where the insured wage is above \$2,300 per month, the purchaser must prove that earnings are at least at that level in order to qualify for the higher benefit.

In the 1992 Annual Report, the Chair of the Board of Governors indicated that an objective in 1993 was to carry out a “complete review and development of a revised average earnings policy.” In the 1993 Annual report, that objective was shown as having been partially met. In the midyear report of the Compensation Services Division of 1994, there was an indication that a working group, consisting of Board staff, was considering external submissions, and that proposals were to be made to the Board on those changes that were supported by both the worker and the employer communities. In October 1994, the working group recommended that a number of proposals, regarded as the non contentious ones, be brought to the Governors.

A decision by the Board Chair, however, was that a complete package should be taken to the Governors, not simply the part where there was no difference of opinion. It was decided that a comprehensive paper would be prepared on the issues relating to changes in the average earnings policy. As of the summer of 1995, that paper is not yet available. The message with regard to policy on average earnings may reflect generally on the Board’s ability to change its policies and practices. First, on certain core issues relating to compensation, finding consensus can be a very slow process, and one that may not lead to change. And when change can be accomplished it may be limited by the reluctance to move in areas where one interest or the other will be discontent.

Health Care Benefits

Workers with compensable injuries or illnesses are entitled to a very broad range of health care benefits. Under most circumstances the Board will pay all the costs of physician and hospital services, medications, diagnostic requirements and appliances. British Columbia allows the worker free choice of attending physician or other qualified practitioner. The latter include chiropractors, dentists, podiatrists and naturopaths. Health care can also be provided by optometrists, dental mechanics, nurses, and physiotherapists. Generally, acupuncture treatments will not be paid for by the WCB. The worker is free to change his/her attending physician, although the WCB may refuse to pay accounts under certain circumstances. For example, where the WCB Medical Adviser decides that the change will be harmful or is medically unsound, the change will not be permitted.

The Board has established a number of guidelines in relation to the treatment given a worker. For example, after eight weeks of treatment by a physiotherapist, chiropractor, or naturopath, the WCB Medical Adviser must determine whether continued treatments are to be authorized. In these and other decisions, the WCB's practices are dictated by basic principles. One goal of the WCB is to promote recovery, so choices by patients or their health care providers that delay recovery or create unwarranted risks of further injury are unacceptable. However, the WCB also tries to give the patient as much choice as possible.

Health care providers are paid according to a negotiated fee schedule. Presently, the WCB pays physicians at a rate of 104 percent of the rate agreed to between the government and the British Columbia Medical Association under the provincial health care system. Additional fees for providing reports are also paid. Attending physicians are expected to provide such reports initially and at approximately two week intervals during the course of the treatment. (These are discussed further below.)

Included under its health care provisions, the Board will pay for six types of allowances and services, over and above the benefits already noted. They are:

- Clothing allowance — The WCB has a schedule of benefits to be paid for the purchase of clothing by limb amputees and persons requiring the wearing of leg braces.
- Homemaker Services — The WCB will pay for homemaker services for temporary situations, such as the worker having to travel to other areas to receive treatment, or when the spouse of a worker escorts a seriously injured worker to another treatment facility leaving the family unattended.
- Independence and Home maintenance Allowance — This benefit is paid to allow the worker some independence when the injury leaves the worker unable to drive a car, or perhaps to use public transportation, and where taxis must then be used. It also is paid to cover those costs of maintaining a home that the worker him or herself can no longer provide, such as painting, landscaping or repair work. The allowance is only paid in cases of severe impairments.
- Personal Care or Nursing Allowance — The WCB has categorized five classes of very severe impairment ranging from level 1 (e.g., blindness, multiple amputations) to level 5 (e.g., quadriplegic, decerebrate). These categories enable injured workers to receive differing levels of allowances. The allowance is not paid automatically, but only where the claimant requires personal care or nursing services.

- Subsistence Allowance — The WCB will provide a per diem to a worker when the worker is undergoing treatment at a place other than where he/she resides. It may also provide this allowance where the worker is away from home to attend a claims or appeals hearing.
- Transportation Allowance — Under some circumstances the WCB will provide an allowance for travel expenses incurred in connection with a hearing or appeal, or for medical care by a specialist or treatment centre.

WCB health care costs in British Columbia have exploded in recent years. That is evident from Table 5.2 which shows the total health care costs, and the average of health care costs per newly registered claim in that year for 1991 to 1994. The limited years indicated in Table 5.2 result from a change in data reporting by the WCB. Beginning in 1992 with retrospective reporting from 1991, the WCB has reported health care costs on an incurred basis, as well as on the previously reported basis of health care cost payments made. The incurred basis includes both the payments made on a claim that year and the expected future health care costs against that claim. On this incurred basis, aggregate health care costs increased by 90 percent from 1991 to 1994 or 24 percent per annum. Over the same time period, incurred health care costs per newly registered claim rose by 95 percent (25 percent per annum) .

Payments for health care in the current period grew by 35 percent from 1990 to 1994 or nearly 11 percent per annum. Though less dramatic than the growth in health care costs incurred, the increase is sufficient to identify health care expenditures as an area that warrants close scrutiny. The data in Table 5.3 represents a time series on health care payments made by the WCB from 1981 to 1994. As noted, no such longer term series is available for health costs incurred. Over the entire 13-year period, health care payments have grown at a compound rate of 8 percent per annum, about 3.4 percent after adjusting for inflation.

In seeking to determine what factors may contribute to these spectacular increases, an important caution is that health care cost problems are not unique to British Columbia. And certainly in many jurisdictions, health care costs in workers' compensation were growing at more rapid rates than under health care generally. An in-depth examination of health care costs and their increases requires a more extensive treatment than belongs in an Administrative Inventory. Several issues, however, may relate very directly to administration and possibly to other system cost issues.

In most situations, hospitals deal with workers' compensation cases under the same rules and practices that apply to any other patients. There are exceptions, however. For example, in some instances, the WCB has made special arrangements to have claimants tested more promptly than would otherwise

have been the case. Extra fees are paid in such situations. This special treatment appears to be used in few cases only.

Prior to October 1991 when a new fee arrangement was negotiated between the WCB and the British Columbia Medical Association, the Board paid physician fees that included a premium of 10 percent over the fees set by the Medical Services Plan. The premium was to reflect the extra services required of physicians in workers' compensation cases due to the regular reporting requirement. Additionally, a small fee was paid for the filing of a Form 8, the physician's initial report to the Board. The October 1991 agreement provided for reduction of the premium over customary fees (from 10 percent to 3 percent) and payments for *each* follow-up report submitted, i.e., a form fee. The premium went from 3 to 4 percent in April 1994, according to the terms of the negotiated agreement.

The form fee constitutes a significant portion of the costs of health care at the WCB. Two of the most commonly billed services are for an initial visit and for follow-up visits to general practitioners.¹ In 1992 and 1993, for example, the fees allowed for initial and for follow-up visits were \$24.64 each. In addition, the form fee for the initial visit was \$27 and \$21 for any subsequent visit. The result of this arrangement was that the effective fee rate for the initial visit represented not a premium of 3 or 4 percent, but 109 percent over the Medical Services Plan service fee. On subsequent visits, by filling out a form, the physician would receive a fee that was 85 percent greater than the fee provided in a non workers' compensation case, where no form was provided. The payment of the form fees, particularly with respect to the subsequent visits, created a sizable incentive for general practitioners to encourage follow-up visits by their patients whose fees were paid under workers' compensation.

Precisely how this incentive affected the frequency of follow-up visits is not known. Yet available data suggest that the fee arrangement may have had a significant impact. In Table 5.4, we report the ratio of the number of subsequent visits to the number of short term disability claims in that year. Since the form fee arrangement became effective late in 1991, the important comparison is between 1992 and 1990, when no form fee (for subsequent visits at least) existed. The ratio of subsequent visits to the number of new, short term disability claims grew by 110 percent over those two years.

The economic incentive created by the fee arrangement beginning in late 1991 may have raised the cost of health care benefits in two ways. If more subsequent visits were provided after 1991, both the costs of the visit and payments for the

¹ In 1993, for every dollar paid to a specialist, general practitioners were paid \$4.06.

form fees would have increased. However, if some physicians were induced to schedule added subsequent health care visits, this would have contributed also to two other phenomena that were occurring at this time, i.e., a lengthening in duration of short term disability and the increasing costs of providing those benefits. Additionally, the attractiveness of the form fee arrangement may conceivably have led to some cost shifting, i.e., inducing doctors to report certain conditions as workers' compensation cases. Given the considerable expense incurred to generate these forms, it might be useful to evaluate whether they provide information that is being used to control the costs of compensation.

Health care and other benefit costs can be increased by other system characteristics. It is one matter for workers to change physicians if they are dissatisfied with the services they are receiving. It is a different matter if the worker changes physicians until finding one that will provide a report or a certificate that aids the worker in obtaining greater cash benefits. Where the practice occurs, it also leads to higher medical costs in workers' compensation, and it can contribute to delays in the provision of health care for all persons.

One of the sources of recent growth in health care costs is the services provided by physiotherapists. From 1990 to 1994, expenditures rose from \$6.4 million to \$10.2 million (59 percent or 12.4 percent annually, compounded). The WCB limits physiotherapy services to a maximum of eight weeks, subject to a request for an extension. Because this maximum is set durationally, in many instances the service is provided five times a week for the entire eight weeks. Moreover, it is common that a request is made, and granted, to extend the treatment beyond the eight weeks. An internal study found that the eight week limit was exceeded in about one-half of all claims where physiotherapy was provided.²

Wage-Loss Benefits

Where a worker has incurred a compensable impairment, physiological or psychological, he/she is entitled to a wage-loss benefit, beginning the first working day after the day that the injury or illness occurred. Benefits are paid where the worker sustains a temporary total or a temporary partial disability. Indemnity benefits for temporary total disability are set at 75 percent of the worker's average earnings, subject to the statutory maximum and minimum benefits. (See Table 5.1) This benefit is paid only where the worker suffers a loss of wages and are tax free. There is no maximum period of time for which such benefits can be paid.

² Internal Report prepared by Health Care Payments Department.

Temporary total disability benefits are terminated when the worker is no longer temporarily and totally disabled. If the worker returns to employment, total disability no longer exists. Where the worker's condition is judged to have stabilized or "plateaued," it is no longer temporary. The decision rests with the Claims Adjudicator, based upon information received from the worker and/or employer and from the biweekly reports of the attending physician or other practitioners. If temporary total disability benefits are terminated, either indemnity benefits end, temporary partial benefits are paid, or the person is evaluated for purposes of paying a permanent pension.

Temporary partial benefits are paid where the worker has some actual or potential earnings, after sustaining a compensable injury or disease. The worker is entitled to an indemnity benefit of 75 percent of the difference between the average earnings before the injury and the average amount earned, or that could be earned potentially, after the injury. This benefit is terminated when the worker no longer has any wage-loss, or when the medical condition is judged to have stabilized and the worker is assessed for a pension. In some cases, the temporary partial benefit will be terminated where the worker's condition changes and a temporary total disability benefit is paid. A decision to reduce or to terminate a wage-loss benefit may be appealed by the claimant.

A third category of wage-loss benefit, aside from temporary total or temporary partial disability benefits is the income loss benefit. The benefit is paid when a worker who has been injured loses time and wages from work because of the need for medical examination or treatment. This benefit is provided if it is not practical for this examination or treatment to be provided during nonworking hours. Typically, the benefit will be the same as that paid for temporary total disability.

Wage-loss claims patterns indicate no single, long term tendency. Following steep declines from 1981 to 1984, Table 5.5 shows that claim counts rose until 1990 at which point they began to decline again. The number of claims, wage-loss or otherwise, are related to provincial employment levels and labour market conditions. In column 2 of Table 5.5, we observe the number of new wage-loss claims per 100 persons employed. Following the very high rates, at least by later standards, of the early 1980s, are four years of stable rates in the range of 5.0 to 5.1 percent. Rates began to rise in 1988, peaking in 1990 and have been in decline since.

The payments made in wage-loss cases, by level and by average annual payment per wage-loss claim first paid are shown in columns 3 and 4 of Table 5.5. These expenditures have increased consistently since 1981. Rising wage-loss payments are caused by several factors. First, workers' wages, in nominal terms,

typically grow each year. Second, rising wages, by formula, lead to an increased maximum benefit, affecting higher wage earners. An increase in the consumer price index drives the minimum benefit level as well. Each of these contributed to growing wage-loss payments over the period, offsetting the fact that there was no increase in the number of wage-loss claims. Average wage-loss payments also will increase if more workers on average receive such benefits (that has not been the long term pattern), or if workers receive these benefits for longer periods of time. The latter has occurred in recent years. A discussion of these issues is found in Chapter 8.

Permanent Disability

If a worker sustains a permanent residual impairment due to an occupational injury or disease after short term disability benefits have been terminated, the worker may be entitled to a pension award for a long term (permanent) disability. Depending upon the condition of the worker, the benefit can be either for permanent partial or permanent total disability. We examine first the more common case of permanent partial disability.

British Columbia employs a “dual” approach to benefits for permanent partial disability. A claimant receives benefits based on an assessment of either the degree of physiological (or psychological) impairment, called a permanent functional impairment, or the loss of earning capacity. A worker’s pension benefit is based on the alternative that provides the larger award.

Permanent disability awards are the responsibility of the Disability Awards Department within the Compensation Services Division. As soon as it becomes evident that a permanent disability is likely to result from a claim, the file is forwarded to that unit for purposes of setting the worker’s average earnings level. The realization that a permanent disability will likely result is generally based on reports from the attending physician, or from the Claims Adjudicator and the Unit Medical Adviser. When the disability determination is likely to be straight forward and not involve any permanent earnings loss, the matter is handled by a Disability Awards Officer (DAO). If the matter is likely to be problematic, or there will be some residual earnings loss, the file is sent to a Claims Adjudicator Disability Awards (CADA).

Until the worker’s condition “plateaus,” the claim is supervised by a Claims Adjudicator in a regular service delivery location or an area office. When the temporary benefits are terminated, the file is sent to Disability Awards and the worker is examined there by a Disability Awards Medical Adviser (DAMA). Since there may be a gap of several months from the time that temporary disability

benefits are terminated and permanent partial disability benefits begin, those workers who are not reemployed may find themselves temporarily without income. Some may depend upon welfare or unemployment compensation. In some cases, the WCB will allow a worker to continue to receive income replacement benefits until the permanent disability benefits begin to be paid. (The payments are recaptured when the pension is capitalized.) This practice, known as continuity of earnings, or "Code R," is utilized when there is significant permanent functional impairment and where it is likely that there will be a loss of earnings based on the impairment. The Vocational Rehabilitation Consultant that has monitored the claim is the source of the recommendation that continuity of earnings benefits be paid. The determination of eligibility is made following a meeting that includes the Claims Adjudicator, Disability Awards, the Medical Advisor, and the Vocational Rehabilitation Consultant.

Permanent Functional Impairments

The medical examination by the Disability Awards Medical Adviser results in a recommended value of the Permanent Functional Impairment. Most physical impairments are "scheduled," that is, the Disability Awards Medical Adviser quantifies the degree of impairment according to values spelled out in specific publications. The *AMA Guides to the Evaluation of Permanent Impairment* have been adapted for use in the case of many impairments, but other guidelines are employed for use with other types of impairments. Occasionally, the adjudicator or officer will raise issues about the Disability Awards Medical Adviser's assessment which can lead to changes, but usually this assessment is adopted. Where a change is made that is not due to a previous error, it is typically on the order of 1–2 points.

If the worker has a permanent functional impairment of 20 percent, for example, the worker is entitled to a lifetime pension benefit of 20 percent of 75 percent (that is 15 percent) of the worker's average earnings as determined by the Disability Awards Department, subject to the maximum and minimum levels of earnings. The award is modified based on age so that for each year that the worker's age exceeds 45 at the date of the award, the percentage rate of compensation is increased by one percent up to a maximum of 20 percent (age 65) of the assessed impairment. For example, suppose a worker at age 55 is given a 40 percent impairment rating. The age adaptability factor would be 10 percent of 40 percent (or 4 percent), providing the worker with a permanent partial disability rating of 44 percent. The benefit would be a lifetime pension of $.44 \times .75 \times$ average earnings level. Permanent pension benefits are subject to revision semiannually based on changes in the consumer price index.

Where the worker has a pre-existing condition, the assessment rating of the compensable impairment could underestimate the impact of a specific injury. An underestimate could also occur where an injury leads to multiple impairments, and the simple summation of the separate ratings would not reflect the full effects of impairment. In either case, the adjudicator or officer may allow that an “enhancement factor” be added to the impairment rating. By parallel, where a summation of multiple impairments leads to an overestimation of the worker’s overall impairment, a devaluation may be utilized.

In the vast majority of claims, the impairment is scheduled. Where the injury is not scheduled, the Disability Awards Medical Advisers use their judgment to set an impairment rating. In unscheduled impairments, no age adaptability factor is employed, since the judgment of impairment can take age into account, as well as any pre-existing conditions. A Disability Awards Medical Adviser conducts about 14 impairment evaluations weekly. In 1994, about 4,100 functional impairment assessments were carried out, about 58 percent in the Richmond office and the balance in the area offices. In some instances, there may be a sizeable difference between the measure of a functional impairment using the British Columbia standard and the *AMA Guides*. In particular, an impairment of the spine tends to be rated much higher under the *AMA Guides*.

A continuing problem is the rating for pain, particularly when no objective symptoms are found. If no objective symptoms are found, the worker is supposed to be evaluated as having no functional impairment, unless the pain is accompanied by a “loss of earning capacity.” If the worker is found to have no functional impairment, it closes the door on the possibility of a Loss of Earnings pension. If there is a functional impairment, however, it leaves open both the possibility of a Loss of Earnings pension and to having the claim reopened at a future date, with the possibility of receiving a different (higher) rating and benefit at that time.

Subjective complaints (pain, etc.) in the presence of an impairment may also lead to a somewhat higher impairment rating (plus 0.5–2.5 points) by an adjudicator or officer. The added amount may increase a Disability Awards Medical Adviser’s rating of the impairment. Workers and others are often surprised and angry at an impairment rating that they judge as low. In particular, if they suffer from severe pain it may be difficult — or impossible — to explain why an impairment is rated at only a small amount, and the worker believes that his/her condition is a severe one. Since treating doctors do not rate a worker’s functional impairment, they may provide poor advice to a worker as to what type of impairment rating the worker might expect.

To provide some idea of the size of awards, consider the following example. In the first half of 1995, the average impairment rating in 400 functional impairment claims for spinal (back) injuries was 4.5 percent. For a worker earning \$25,000 per year, the entitlement would be $\$25,000 \times .75 \times .045$ or \$844 per year, if the worker is below the age of 45. For a 55-year old, the formula would be modified to be $\$25,000 \times .75 \times .0495$ or \$928 per year. A 55-year old with a 4.5 percent rating and average earnings of \$40,000 would receive \$1,485 per year (or \$28.56 per week). For the first half of 1995, the average rating of all new functional disability awards was 4.9 percent.

Loss of Earnings Pensions

The worker's benefit in a long term disability claim is based on either the degree of impairment or on the loss of earning capacity, whichever is higher. We turn now to the process used to determine the degree of earnings loss. Initially, the procedure is the same, since an impairment rating is made first. The Vocational Rehabilitation Consultant (VRC) who has worked with the file prepares an employability assessment. It will describe the person's work history, the training and education that the worker has received, and any work activity since the injury. It is possible that the worker will be sent by the rehabilitation consultant to the Functional Evaluation Unit (FEU). (See Chapter 6) Typically, the worker is evaluated over a two week period and a very detailed and technical report on the worker's capabilities is prepared by the Functional Evaluation Unit. The report covers the areas of occupational therapy, remedial therapy, and functional evaluation based on activity in an occupational setting. This report is used by the Vocational Rehabilitation Consultant to prepare the employability assessment. With this information, the consultant is expected to identify two or three jobs that the worker could perform, and that are available in the relevant labour market, as well as the pay rates for these jobs at the time of the injury. The consultant will send a copy of this report to the worker at the same time that it is forwarded to the Claims Adjudicator Disability Awards.

The Claims Adjudicator Disability Awards then has four basic sets of information to utilize, that is, the worker's previous earnings level, the functional impairment assessment from the Disability Awards Medical Adviser, the Functional Evaluation Unit report or other supplementary information, and the Vocational Rehabilitation Consultant's employability assessment. Based on these four elements, the Claims Adjudicator Disability Awards makes a recommendation to a 3-person Disability Awards Committee, made up of a manager

from the Disability Awards Department, a senior Disability Awards Medical Adviser, and a Vocational Rehabilitation Manager. It is this committee that has the responsibility to determine the size of any projected earning loss benefit, or loss of earnings pension, that will be paid.

The Vocational Rehabilitation Consultant's recommendations can have an enormous impact on the economic outcome of the claim. In practice there are two techniques that are utilized to estimate earnings loss. First, if the worker has returned to work after the injury stabilizes, the rehabilitation consultant might use the worker's actual earnings as the basis for judging any long term projected earnings loss due to the injury or illness. Alternatively, the consultant may ask, what type of employment is this worker capable of taking? The recommendation could also be based on the expected competence of the worker after having completed a training or education program that the consultant believes will allow the worker's potential to be maximized. It must be recognized that the Claims Adjudicator Disability Awards need not accept the consultant's recommendation but retains final decision authority. In some instances, the consultant will be asked to reconsider or redo his/her report.

A numerical example may help clarify how the projected loss of earnings capacity is calculated. Suppose a worker is injured in 1993, with average earnings of \$3,000 per month (below the earnings maximum at that time). The person is assessed in 1995 as having a 30 percent, scheduled, permanent functional incapacity. If the worker is below age 45 in 1995, there is an entitlement to a lifetime pension of $.30 \times .75 \times \$3,000$ or \$675 per month. Alternatively, the Disability Awards Committee accepts the Claims Adjudicator Disability Awards's determination that the worker is capable of working no more than 60 hours per month at clerical work (that is available) that paid \$10 per hour in 1995. Perhaps the worker is already employed at this job and working a 15 hour week. Or perhaps, the judgment is made that after a 3-month course, the worker would be able to do that job, working up to 60 hours per month, and that the pay in that job in 1995 was \$10 per hour. Hence, the worker's monthly earnings loss due to the injury or disease is \$3,000 minus \$600 (60 hours @ \$10 per hour) or \$2,400 per month and there is an earnings loss entitlement of $.75 \times \$2,400$ or \$1,800, clearly exceeding the benefit of \$675 based solely on the assessment of functional impairment. In this instance, the worker would receive the wage-loss pension of \$1,800 per month.

Benefits based on the impairment assessment alone are payable for life, though they are adjusted if the impairment assessment is changed. Benefits paid for projected earnings loss are not lifetime benefits for two reasons. First, the WCB will reassess the worker's income status two years, or occasionally one year,

after setting the pension. Thereafter, the Claims Adjudicator Disability Awards has discretion over whether or not to reassess the worker. In some cases, a physician or hospital charge will indicate that the worker's physical condition may have changed, in turn requiring that a new assessment be made of the permanent functional impairment and of the worker's projected earnings level. The 2-year initial reassessments were not carried out from 1991 to 1993. A change in procedures that had been newly instituted in 1991 was dropped in that year, after being judged to be inappropriate by the Board. A new procedure was begun to carry out the reassessment in 1993.

A second reason that the earnings loss is not a lifetime benefit is that workers are not projected to work and earn for a lifetime, but instead, to retire in their later years. However, the WCB is mindful also that a worker's retirement benefits are likely to be reduced due to earnings losses as a consequence of a compensable injury or disease. To take account of these two factors, the WCB uses a complex formula. If the injury occurs when the worker is age 50 or less, the pension based either on impairment or projected earnings loss is payable for life - unless the worker's assessed condition is subsequently changed. If the worker is age 65 or over at the time of injury, the pension has been based strictly on permanent functional impairment and not on projected earnings loss. (That has been changed due to a recent decision by the Appeal Division.)

If the injury occurs when the worker is age 51-64, and the worker's benefit is based on earnings loss, that benefit (unless changed due to reassessment) is payable until age 65. At age 65, the pension becomes the benefit based on the permanent functional impairment, plus a fraction of the difference between the two methods. That fraction is set at 15/15ths (of the difference between the two methods) and declines by 1/15th for each year of age beyond 50. For example, if the injury occurred at age 60, a worker receiving an earnings loss benefit would receive a lifetime pension at age 65 consisting of the impairment based benefit plus 5/15ths of the difference between the earnings loss and impairment based benefits.

An injured worker may also be entitled to a lump sum benefit where the injury or industrial disease results in a permanent disfigurement. This award will be paid only if the disfigurement is judged to be serious and potentially harmful to the worker's projected earning capacity. Thus, the WCB will take into account the worker's occupation and the visibility of the disfigurement.

If the worker's injury is superimposed on a pre-existing disability, the statute obligates the Board to compensate only for the proportion of the disability - following the compensable injury - that may reasonably be attributed to the injury. "The measure of the disability attributable to the personal injury or dis-

ease shall, unless it is otherwise shown, be the amount of the difference between the worker's disability before and disability after the occurrence of the personal injury or disease" (Section 5(5)). The apportionment based on a pre-existing disability, is applied to impairment based pensions and may be applied to projected earnings loss pensions.

In cases involving exceptionally serious injuries, e.g., total blindness, paraplegia, severe loss of cerebral powers, the worker may be judged to be permanently and totally disabled. In such claims, the lifetime pension is awarded as soon as it is clear that the worker will survive his injuries. Benefits are based on 75 percent of the worker's average earnings, subject to a maximum (same as for short term disability), and to a special minimum just for permanent and total disabilities. (Section 22(2))

Pension benefits are commuted (paid in a lump sum) where the monthly pension is below \$100 per month and the commuted value is under \$40,000. If the monthly pension is between \$100 and \$125 and the value of the commutation is between \$40,000 and \$60,000, the worker is given a choice of taking a lump sum or the monthly pension. Where the pension amounts exceed these levels, the Board will very rarely permit commutations to be paid, and only in cases where the calculation is based on permanent functional impairment. Partial commutations are also permitted. However, payment of a commutation does not close out a case. Therefore, workers may seek health care benefits subsequent to the payment of any lump sums and their disability status may be reassessed subsequently, with some possibility of a revision in either direction.

The process of setting the disability award is one of the most difficult, and potentially contentious, aspects of the benefits scheme. The use of schedules allows for some degree of consistency in the rating of permanent functional impairment. Even here, however, it must be recognized that some room exists for Disability Awards Medical Advisers to differ in their ratings, to say nothing of the inherent quality and rationality of the schedules. The core issue, however, is the extraordinary difficulty in identifying the worker's projected earnings capacity. Where the worker has suffered some earnings loss, the Board is asked to decide what type and quantity of work the person can be expected to achieve that could reasonably be available, perhaps with the assistance of a retraining program and perhaps after geographic relocation. Unlike some other compensation agencies in North America, however, the WCB intends that these decisions will be reassessed periodically. Hence, serious errors in assessing projected earnings losses can be caught by a subsequent reappraisal of the worker. Of course, the worker always has a right to appeal the Board's decision as well. (See Chapter 4)

The difficulty in seeking to estimate future earnings loss raises many issues, including the paramount importance of the skill of the Vocational Rehabilitation Consultant. And because there is considerable room for judgment in doing this, it promotes maximal opportunity for an appeals body such as the Review Board to supplant that judgment with its own.

Permanent Disability Incidence

The data in Table 5.6 may give some added understanding of developments in the area of long term disability claims. Columns 1, 2 and 3 show the number of new claims and claims where adjustments have been made from 1981 to June 30, 1995. Column 1 indicates that there has been a sizable growth since the 1980s in the number of LTD claims. The annual growth rate of 8 percent may understate the actual growth rate since a number of claims to readjust some workers' pensions were clustered in 1981 and the actual peak was in 1993, not 1994.

Columns 2 and 3 suggest that the growth in permanent disability claims were substantial both for functional and loss of earnings (LOE) awards, but especially so for the latter. Another way to view the relative growth of LOE awards is evident in column 4. Column 4 reveals that LOE pensions as a proportion of all LTD awards in a year went from a low point in 1985 (5.8 percent) to over 15 percent in 1992 and 1993. Column 5 indicates that functional awards, relative to wage-loss claims *in the previous year* have grown sharply from 1985. They have grown each year since 1991.

An alternative way to gauge the growing importance of the number of LOE pensions awarded is found in column 6. There, we calculate the ratio of LOE pensions awarded in a year as a fraction of wage-loss claims first paid *in the previous year*. For every 1,000 wage-loss claims first paid in 1981, there were 2 LOE pensions awarded in 1982. From 1991 forward, for every 1,000 new loss claims, there were 10 to 12 new LOE pensions awarded in the following year.

The data in Table 5.6 all focus on the numbers of claims, while the data in Table 5.7 relate to the costs of these claims. The first two columns of Table 5.7 are the total costs of new or revised functional awards and LOE awards by year. After adjusting for inflation, the real cost of functional awards grew by 1.9 percent per year while LOE awards costs grew at an annual rate of 12.4 percent, compounded. This very strong growth is hardly a surprise based on the substantial growth in the number of LOE's awarded as seen in Table 5.6. From 1981 to 1987, the total costs of the functional awards were from 2.5 to 4.8 times greater than the size of LOE costs. By contrast, that gap began to narrow beginning in

1985 and from 1992 to 1994, the costs of LOE's surpassed the costs of the functional awards. (See column 3)

Columns 4 and 5 indicate the average cost per functional award and per LOE pension awarded from 1991 to 1994. The average cost per functional award *fell* from 1981 to 1994 by 1.6 percent per annum. In real dollars, the average functional award *declined* by 5.8 percent per year. The average cost for an LOE award increased from 1981 to 1994, but in real dollar terms it declined slightly. In real terms, it declined by 0.2 percent per year over the 13 – year period. If one compares the average functional award to the average LOE pension, the data in column 6 show the declining size of the former, relative to the latter.

The picture that emerges from a summary of the data in Tables 5.6 and 5.7 is the following. Over the past 13 years, the number of pensions has grown vastly more rapidly than has the number of new wage-loss claims. Though this growth has been substantial for functional awards, it has grown even more rapidly for the more expensive LOE cases. The likelihood of a wage-loss claim resulting in a functional award is about three times greater today than 12 or 13 years ago. It is five times more likely that a LOE pension will be awarded. Unless the case is made that more serious injuries and illnesses have been developing, it seems reasonable to argue that the standards for gaining a pension have been lowered over time, especially for LOE pensions. One could argue, further, that the aging of the workforce and the downsizing of some industries have played a contributory role in the growth of the LOE pensions.

A striking feature of these benefits has been the decline in the dollar cost of functional cases, suggesting that many of the injuries that now lead to functional awards are minor ones. Indeed, it is likely that these low value functional awards likely would not have resulted in pensions during the 1980s. In particular, these may be some of the cases often cited by critics of WCB practice, e.g., subjective complaints with little or no objective symptoms. They are also likely to include hearing loss cases.

Additionally, the relatively small dollar value of many of the functional pensions (recall that the average functional impairment rating in spine cases in 1995 is 4.5 percent) may cause adjudicators and appeals authorities to be less reluctant to shift an award from a functional to a LOE pension. Clearly, the relative difference between the LOE and functional has grown, making it more attractive for workers to press their claims until they receive an LOE.

A long term migration of cases, i.e., formerly no pensions but now receiving functionals, and what formerly would have been a functional now receiving an LOE pension, conforms with the higher number of LOE cases without a long

term increase in their (real) average cost. Assuming this picture is accurate, it tells us nothing about the cause of the migration. However, the decline in the relative value of functional awards may be a contributing factor.

Vocational Rehabilitation Benefits

While a more detailed description of rehabilitation services, programs and benefits is available in Chapter 6, major benefit programs provided through the Vocational Rehabilitation Services Department will be briefly summarized here.

Vocational rehabilitation services are provided to injured workers, and in some cases to the workers' dependants in order to offset the effects of compensable injuries, industrial diseases and fatalities in accordance with Section 16 of the Workers' Compensation Act. Services provided include vocational assessment and planning, counselling, skill development, job readiness and placement assistance, and employability assessments.

In support of these services the Vocational Rehabilitation Services Department provides certain benefits to the injured worker to sustain rehabilitation efforts. Wage-loss equivalency benefits provided by the Department are payable only when temporary wage-loss benefits have concluded. These benefits may be awarded when workers are either awaiting or undertaking specific vocational programs. In addition, transportation and subsistence allowances, as well as accommodation at the WCB's Rehabilitation Residence are also considered benefits in support of the vocational programs.

As discussed earlier, it is also possible that the worker is given a rehabilitation income continuity allowance between the period following the termination of wage-loss payments and the commencement of permanent partial disability pension (Code R payments). It is widely believed both within and outside the WCB that Code R payments are being made less frequently, currently, as a means of holding down expenditures. In such cases, a worker may find that there is no income for one year or more between the time that short term disability benefits end and a pension begins.

During the rehabilitation process, workers participating in work evaluations are provided financial assistance at wage-loss equivalency. For workers participating in the Job Search Program or actively seeking reemployment, a discretionary benefit in the form of a job search allowance is available, and computed at wage-loss equivalency rates. If worksite or job modifications are required to facilitate reemployment, the WCB may provide the required financial assistance to accommodate the worksite or job in relation to the worker's

functional needs, including expenditures for special equipment and tools. When training on the job is utilized as a training and placement strategy, the WCB will develop shared cost arrangements with the employer.

When the WCB is supporting a formal training program for an injured worker the benefits provided would normally include: a training allowance at wage-loss equivalency when enrolled in a full-time program, tuition, fees and any required books, materials and equipment; and travel and subsistence allowance where appropriate. In certain cases, the WCB may contribute to the cost of starting a business in lieu of providing training. In cases where there has been a compensable fatality of a worker, the Board may offer assistance, to a dependant spouse or other dependants for counselling and training in order to improve the spouse's earning capacity.

When providing services to individuals with spinal cord or other severe injuries the WCB may additionally provide vehicle modifications, house renovations, personal care allowances, independence and home maintenance allowances, and homemaker services. Service requirements are assessed and recommended by the Vocational Rehabilitation Consultant.

Death Claims

In compensable death claims, funeral and accidental death expenses are paid by the WCB, subject to a maximum that is adjusted semiannually. Under certain circumstances, the WCB may pay the expense of transporting the body. Death benefits are paid to dependants of the worker, that is, family members who were wholly or partly dependant upon the worker's earnings. Where two workers are married and both are contributing to the support of a household, dependency is deemed. Children cease to be dependants when they become 18, or at age 21 if they are regularly attending school. Dependant children who are disabled will continue to receive benefits, regardless of their ages.

Where the surviving spouse has two or more children, the monthly compensation benefit, when combined with any federal benefits to or for those dependants, is the compensation rate that would have been paid had the worker been permanently and totally disabled at the date of death, plus a monthly stipend for every child beyond two in number. Thus, where the surviving spouse with two or more children may receive a benefit under the Canada Pension Plan, the Board offsets the workers' compensation benefit so that together, benefits do not exceed 75 percent of the worker's average earnings. In addition the surviving family would receive the stipend for any children beyond two. The worker's average earnings are subject to the permanent total disability maxi-

imum and to a minimum average earnings level that differs from the one utilized in cases of permanent total disability.

Where there is a surviving spouse and one child, the benefit is 85 percent of what would have been paid had the worker sustained a permanent and total disability at the date of death, i.e., $85\% \times 75\% \times$ average earnings. Again, this benefit is subject to an earnings maximum and minimum, and an offset for any federal benefits. If the dependant spouse has no children, the death benefit then depends upon the age of the person. Subject to the earnings maximum, if the survivor is 50 years or older, or an invalid, the survivor's benefit is 60 percent of the monthly compensation that would have been paid had the worker been permanently and totally disabled at the date of death, subject to the offset for any Canada Pension Plan benefits. There is a minimum benefit level set by the WCB and in such cases there is no offset for federal benefits.

If the surviving spouse is without a child, not an invalid, and below the age of 40, the benefit paid is a capital sum, with an instalment paid immediately and the entire balance paid within six months. It is noteworthy that the size of this benefit is invariant with respect to the worker's average earning level. In 1994, this sum was \$35,320.60. Where the surviving dependant has no children, and is not an invalid and is between age 40 and 50, the benefit is essentially set on the basis of four factors; that is, the benefit formula used for childless survivors over age 50 together with the minimum benefit applicable where the person is above age 50, an increasing sliding scale for each year of age from 40 to 50, and the worker's average earnings level. The federal benefits offset is applied.

Benefits are subject to recalculation when children cease to be considered children, or where a survivor is no longer an invalid. The amendments to the Workers' Compensation Act in Bill 63 in 1993, had a significant impact on dependants' benefits. Surviving spouses had become disentitled to monthly benefits due to remarriage. Because of Bill 63, those survivors that had lost benefits had them reinstated retroactively and future survivors would not lose benefits due to remarriage. Survivors who remarried prior to April 17, 1985 are still limited to receiving only the value of two years of monthly benefits.³

This change in the death benefit entitlement meant that a charge to claims cost expense had to be taken for retroactive and future payments for those who had remarried, and for those who would remarry in the future without losing benefits. Future fatality costs would become greater also. As described in Chapter 2, the charge added to the fund due to this provision was \$108 million.

³ A legal challenge by some of those who remarried prior to April 17, 1985 has been mounted.

The data in Table 5.8 show the number of fatality claims accepted each year by the Board. The overall number of compensable fatalities has been in the range of 120 to less than 200 over the 13-year period. Fluctuations from year to year are partially due to backlogs in claims adjudication that build-up periodically, and are then eliminated in drives to reduce undecided cases. The relatively low levels in the mid 1980s correspond to a period when the WCB went to some lengths to hold down its expenditures, though we have no evidence of a causal relationship. The total annual costs of new cases (column 2) and the average costs of new cases (column 3) show steady increases until the jump in 1993 and 1994, for circumstances previously noted. If we consider the period 1981 to 1992 only, costs charged grew by an average annual rate of 5.8 percent (or 0.7 percent in real terms). From 1981 to 1992, the average cost for a new fatality case grew at a rate of 8.8 percent (3.5 percent after adjusting for inflation).

Other Benefits

It has been noted already that Canada Pension Plan benefits are offset by the Board in specified death claims. It has also been observed that some earnings loss pensions are adjusted when the recipient becomes 65 years of age, partly to take account of any retirement benefits that the worker may receive.

During periods of unemployment due to workplace injuries or diseases, the worker may be eligible to receive unemployment insurance benefits. However, if the worker is receiving a wage-loss benefit from the WCB, then he/she cannot collect unemployment insurance for the same time period for which the WCB has paid. The WCB is considered the first payer, and if both benefits are paid for the same period, the worker is obliged to reimburse the Human Resources Development Canada. The Board is not required, however, to enforce this. If the worker receives short term disability benefits for a time period for which welfare benefits are also received, the Ministry of Social Services and Housing is eligible to be reimbursed by the Board. In turn, the Board will deduct this from the worker's entitlement.

As the exclusive remedy, workers or their survivors are not able to sue their employers for workplace injuries or illnesses. Unlike many other jurisdictions, however, a worker or survivor with a compensable claim is prohibited from suing virtually *any* employer or worker (who acted as a worker) in the Province. Where a worker or dependant has a cause of action, the claimant must elect to pursue *either* a court action *or* their workers' compensation entitlement. If the law suit is pursued, the WCB takes no action on the claim. If the claimant recov-

ers less from the suit than the entitlement under workers' compensation, the WCB will pay the claimant any compensation benefits that are appropriate, minus the recovery from the law suit or any third party settlement.

If the claimant chooses to elect worker's compensation and not to sue, the WCB is subrogated to the action. The WCB is able to sue not only for the value of any disbursements that it made with regard to the claim, but all damages that the worker or survivor could have recovered had they pursued the suit. Not only does the WCB file suit in such third party cases, it has also filed malpractice suits where it believed such actions were warranted. Though these malpractice suits are not common, the Board has had some success with them.

Table 5.1 Wage-Loss Benefit Rates

Year	Max. Annual Wage Rate	75 Percent of Maximum Wage Rate Weekly	Minimum Wage- Loss Benefit*
1980	\$20,400	\$293	\$127-133
1981	22,200	319	141-150
1982	24,700	355	159-167
1983	26,182	377	175-178
1984	30,200	434	183-187
1985	32,400	466	189-194
1986	40,000	575	197-201
1987	41,100	591	206-210
1988	41,300	594	215-219
1989	42,200	607	224-229
1990	43,400	624	235-240
1991	45,800	659	247-255
1992	48,000	690	257-260
1993	50,600	728	261-264
1994	51,300	738	266-265
1995	52,400	754	266-291

*Two rates shown as rate is adjusted semiannually. The minimum benefit is either the rate indicated or the worker's wage, whichever is lower.

Source: Workers' Compensation Board Annual Reports

Table 5.2 Health Care Costs (WCB)

	1991	1992	1993	1994	Growth Rate
Paid (\$Million)	\$98.74	\$109.97	\$118.63	\$133.20	10.5%
Incurred (\$Million)	\$118.52	\$151.05	\$168.94	\$224.83	23.8%
Paid per Newly Registered Claim	\$485	\$555	\$608	\$673	11.5%
Incurred per Newly Registered Claim	\$582	\$764	\$866	\$1,136	25.0%

Source: WCB of British Columbia

Table 5.3 Health Care Expense*

Year	Total Health Care Payments (\$000)	Cost Per Registered Claim	Costs for Health Care Only Claims (\$000)	Cost Per Health Care Only Claim
1981	\$48,805	\$248	\$4,938	\$66
1982	56,938	356	6,527	104
1983	59,465	392	6,739	119
1984	59,471	394	6,834	124
1985	57,422	362	7,249	125
1986	57,941	371	8,185	142
1987	63,752	377	10,013	168
1988	73,177	380	13,283	183
1989	77,981	477	13,523	183
1990	91,451	421	15,817	201
1991	98,742	485	18,405	268
1992	109,969	556	17,429	262
1993	118,626	608	18,401	328
1994	133,204	673	21,654	365
Annual Growth Rate	8.0%	8.0%	12.0%	14.1%
Real Annual Growth Rate	3.4%	3.4%	7.2%	9.2%

*Does not include administration expense
Source: Workers' Compensation Board, Annual Reports

Table 5.4 Subsequent Visit Services Paid by WCB Clients

Year	No. of Subsequent Visit Services	No. of Subsequent Visit Services/Short Term Disability Claims
1990	150,516	1.73
1991	158,706	1.96
1992	293,902	3.63
1993	283,243	3.67
1994*	313,048	3.80

* Preliminary

Source: WCB of British Columbia

Table 5.5 Wage-Loss Claims and Costs

Year	Wage-Loss Claims First Paid*	Wage-Loss Claims First Paid/100 Employed	Total Wage-Loss Payments (\$000)	Total Wage-Loss Payment/ Wage-Loss Claims First Paid
1981	86,264	6.8	\$119,778	\$1389
1982	70,255	5.8	127,054	1,808
1983	63,291	5.3	124,748	1,971
1984	60,044	5.0	117,193	1,952
1985	62,052	5.1	116,557	1,878
1986	63,066	5.0	130,575	2,070
1987	66,869	5.1	147,002	2,198
1988	74,815	5.5	169,952	2,272
1989	81,046	5.6	185,778	2,292
1990	87,147	5.9	205,080	2,353
1991	81,236	5.5	228,274	2,810
1992	81,003	5.3	273,364	3,374
1993	79,503	5.0	310,428	3,905
1994	81,488	4.7	343,951	4,221
Annual Growth Rate	-0.4%	-2.4%	8.5%	8.8%
Real Annual Growth Rate	—	—	3.8%	4.1%

*Includes payments for fatalities

Source: Workers' Compensation Board, Annual Reports

Table 5.6 Long Term Disability Claims Counts

Year	LTD Claim Count	Functional Claim Count	Loss of Earnings Claim Count	LOE's/ LTD's	Functional Wage Loss*	LOE/ Wage Loss*
1981	2,266	1,935	180	7.9%		
1982	2,062	1,809	191	9.3%	2.1%	0.2%
1983	1,802	1,598	163	9.0%	2.2%	0.2%
1984	1,770	1,631	122	6.9%	2.6%	0.2%
1985	1,235	1,134	72	5.8%	1.9%	0.1%
1986	2,768	2,537	205	7.4%	4.1%	0.3%
1987	3,508	3,237	257	7.3%	5.1%	0.4%
1988	4,883	4,215	468	9.6%	6.3%	0.7%
1989	4,692	4,174	469	10.0%	5.6%	0.6%
1990	5,331	4,748	561	10.5%	5.9%	0.7%
1991	4,904	4,330	533	10.9%	5.0%	0.6%
1992	5,481	4,607	854	15.6%	5.7%	1.1%
1993	6,515	5,484	1,010	15.5%	6.8%	1.2%
1994	6,248	5,400	833	13.3%	6.8%	1.0%
1995**	3,475	3,052	416	12.0%	7.5%	1.0%
Percent Change						
1981-94	176%	179%	363%	N/A	N/A	N/A
Annual Rate of Growth						
1981-94	8.1%	8.2%	12.5%	N/A	N/A	N/A

* The rates in columns 6 and 7 are calculated with lags. Column 6 is the number of functional awards in a year, divided by the number of new wage-loss claims paid in the previous year. Column 7 is the ratio of new loss of earnings claims awarded to the number of new wage-loss claims paid in the previous year.

** Data for 1995 are based on claim counts for the first 6 months of the year. For purposes of calculating columns 6 and 7, the functional and the loss of earnings claim counts were simply doubled.

Source: WCB of British Columbia

Table 5.7 Long Term Disability Costs

Year	Functionals Total (\$000,000)	LOE Total (\$000,000)	\$ Functional/ \$ LOE	\$ Average Functional	\$ Average LOE	\$ Average Functional/ \$ Average LOE
1981	\$48.7	\$15.9	3.1	\$25,200	\$89,900	0.28
1982	45.4	15.0	3.0	25,100	89,900	0.28
1983	44.2	17.4	2.5	27,700	92,200	0.30
1984	45.0	9.3	4.8	27,600	76,500	0.36
1985	27.0	6.5	4.2	23,400	90,600	0.26
1986	45.6	15.6	2.9	18,000	76,000	0.24
1987	58.3	22.9	2.5	18,000	90,000	0.20
1988	81.2	52.6	1.5	19,200	112,400	0.17
1989	77.3	58.1	1.3	18,500	116,400	0.16
1990	92.0	71.4	1.3	19,400	127,300	0.15
1991	85.8	69.1	1.2	19,800	129,600	0.14
1992	97.9	130.0	0.8	21,200	151,000	0.14
1993	117.5	147.0	0.8	21,400	144,900	0.15
1994	110.5	128.8	0.9	20,500	154,600	0.13
Average Annual %	6.5%	17.5%	N/A	-1.6%	4.3%	N/A
Average Annual %, Real Dollars	1.9%	12.4%	N/A	-5.8%	-0.2%	N/A

Source: WCB of British Columbia

Table 5.8 Fatality Claims and Costs

Year	Claims	Charged (\$000)	Average Claim Cost
1981	197	\$15,887	\$80,645
1982	176	19,453	110,528
1983	148	16,303	110,155
1984	134	16,594	123,836
1985	126	13,382	106,206
1986	120	17,313	144,275
1987	140	19,369	138,350
1988	162	23,804	146,938
1989	175	24,260	138,629
1990	168	24,927	148,375
1991	141	25,312	179,517
1992	146	29,676	203,260
1993	124	115,972	935,258
1994	152	52,089	342,691
Annual Growth Rate	-2.0%	9.6%	11.8%
Annual Growth Rate per Worker	-3.9%	7.4%	—
Real Annual Growth Rate		4.9%	7.0%

Source: Workers' Compensation Board, Annual Reports

Chapter 6

VOCATIONAL REHABILITATION SERVICES

The Vocational Rehabilitation Services Department is located within the Compensation Services Division of the Workers' Compensation Board (WCB). During the past 4-year period (1991–1995) there have been numerous organizational changes that have affected services provided to injured workers and the support required by the Vocational Rehabilitation Consultants in carrying out their multifaceted role. As a result, many of the issues originally documented in this area in the 1991 Administrative Inventory have not been adequately addressed. Now, some four years later, these issues and other developing internal and external factors that will be identified in this chapter, are in critical need of address and resolution.

At the WCB, services are provided to injured workers, and in some cases the workers' dependants in accordance with Section 16 of the Workers' Compensation Act, which serves as guiding legislation for the Department. This legal mandate indicates that:

- (1) To aid in getting the injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation;
- (2) Where compensation is payable under this Part as a result of the death of a worker, the Board may make provisions and expenditures for the training or retraining of a surviving dependent spouse, regardless of the date of death; and
- (3) The Board may, where it considers it advisable, provide counselling and placement services to dependants.

According to Chapter 11 of the WCB *Rehabilitation Services and Claims Manual*, services provided to clients through the Department include counselling, vocational assessment and planning, job readiness/skill development, placement assistance and residual employability assessment. The principal objectives of these vocational rehabilitation services are to: (1) assist workers in their efforts to return to their pre-injury employment or to an occupational category comparable in terms of earning capacity to the pre-injury occupation; (2) provide assistance considered reasonably necessary to overcome the immediate and long-term impact of compensable injury, occupational disease or fatality; (3) provide reassurance, encouragement and counselling to help the worker maintain a positive outlook and remain motivated toward future economic and social capability; and (4) provide preventative vocational rehabilitation services when appropriate.

Referrals for vocational rehabilitation services are typically initiated by Claims Adjudicators located in the various Service Delivery Locations (SDLs) throughout the Province and from the Disability Awards Department. However, workers may also be directly referred by physicians, hospitals, union representatives, employers, other agencies, or by seeking assistance themselves. During 1990, the Department received 11,453 new referrals, which represented 5.3 percent of all work injuries reported and nearly 14 percent of wage-loss claims first paid. The pattern of new referrals for vocational rehabilitation services since that time shows a general plateau during 1991 and 1992 (11,700 and 11,500 respectively) and a notable decrease during 1993 and 1994 (9,000 and 8,700).

In terms of eligibility for services, it is the Vocational Rehabilitation Consultant (VRC) who makes the determination and identifies the nature and extent of vocational rehabilitation services to be provided, based on whether it appears that such assistance may be of value to a WCB client. Referral guidelines exist for immediate referrals (e.g., spinal cord injuries, major extremity amputations, severe brain injuries) and general referrals (e.g., anticipated problems returning to work, requests for employability assessments). However, eligibility decisions and the nature and extent of services to be provided are discretionary rather than an automatic entitlement. As a result of the discretionary nature of eligibility decisions and service provision, the philosophy and values of the Department (in the form of both formal and informal policy) take on great importance in the delivery of services to injured workers.

According to interviews with managers and consultants there appears to be a commitment to early intervention, individualized services, and priority services to those individuals with severe disabilities. However, it was suggested that more limited types of assistance are provided to individuals with less severe dis-

abilities and that these services are contingent on the perceived motivation and commitment of the injured worker. Since the last Administrative Inventory, Chapter 11 of the *Rehabilitation Services and Claims Manual* has been revised and approved by the Board of Governors. The principal changes to this policy document were the articulation of what constitutes quality rehabilitation (#85.20) and the development of guiding principles of quality vocational rehabilitation (#85.30) which serve to clarify the philosophy and values represented in the provision of vocational rehabilitation services at the WCB.

Organizational and Administrative Structure

In 1991 we indicated that attention needed to be given to the role of the Vocational Rehabilitation Consultant and the level of management support (e.g., clinical supervision and ongoing training) provided to these professionals within the claims units and area offices. We observed that demands on rehabilitation management appeared excessive, both in relation to the number of consultants supervised by each manager and because the consultants were physically located in separate units from management within the WCB Richmond Office, Rehabilitation Centre, and in the area offices. We also indicated that if decentralization were to result in the development of satellite services centres, that the organizational structure should be designed to enhance accountability for services delivered, provide more immediate access to professional clinical supervision, and the development of a more cooperative team approach to the adjudication/rehabilitation process.

During the latter part of 1992 and early 1993, Compensation Services implemented two related initiatives which directly impacted the structure and management of vocational rehabilitation services. Decentralization, or the geographical specializing of service delivery offices, was initiated through the alignment of claims units to the geographical location of the accident employer. Although the original discussions of decentralization in 1991 related to the physical movement of offices into the client/employer community, and away from the centralized Richmond Office in the lower mainland of the Province, this was generally not what occurred. Instead, service delivery locations (SDLs) were restructured to include both vocational rehabilitation consultants and claims adjudicators, who worked with referrals from a particular geographical region of the lower mainland. All but two of these SDLs are still physically located within the WCB's main facility in Richmond.

The other aspect of this model was the implementation of a single Client Service Manager within each of the SDLs (which also includes the area offices outside Richmond). Therefore, in the original plan of implementation of these concepts, Phase 1 included the blending of vocational rehabilitation with claims personnel within the SDLs under the generic management of a Client Service Manager. Phase 2 of the plan was the identification of technical resource individuals who would provide supervisory and technical expertise to the Vocational Rehabilitation Consultants within these integrated administrative structures. Phase 1 of this plan was implemented, including the reassignment of some rehabilitation managers as generic Compensation Service Managers and others were placed back into the line as Consultants. Phase 2 of the plan was never implemented. Apparently, part of the explanation for the lack of implementation of Phase 2 related to union objections to excluding the supervisory positions called for in the model from the bargaining unit. These issues were never resolved and no alternatives were developed. The net result was the implementation of a blended structure *without any technical support* for Vocational Rehabilitation Consultants within the SDLs. This was also the point at which the Vocational Rehabilitation Services Department was dissolved and the entire professional infrastructure supporting vocational rehabilitation services ceased to exist.

These structural and management changes appear to have contributed greatly to the general loss of focus and morale among the consultant group, a significant and sustained increase in spending patterns, and what is generally perceived to be an overall decline in the quality and accountability of vocational rehabilitation services provided to clients during the ensuing 2-year period.

These more recent problems occurred within a historical context of extraordinary change in leadership and vision within the Vocational Rehabilitation Services Department throughout the past 15 years. This instability appears to have had profound effects on staff morale, as well as impacting the overall performance of the Department. Some of the problems that have resulted from this situation stem from very mixed messages over the years regarding the expectations of service delivery for the vocational rehabilitation staff. These would include an uncertainty and a general lack of commitment during past years to developing strategic plans for future departmental development, setting clear goals and expectations of performance for managers and consultants, securing the required level of resources to meet the departmental mandate, and implementing and utilizing sufficient management information systems to monitor the performance of the Department in relation to its mission.

By early 1995 the problems experienced as a result of the lack of structure, oversight and support for vocational rehabilitation services were recognized

within Compensation Services, and a decision to reinstate a centralized departmental and management structure in support of vocational rehabilitation services was made. The actual implementation of the new departmental and management structure occurred in June of 1995. The newly implemented Vocational Rehabilitation Services Department within the Compensation Services Division consists of a Director, who reports to the Vice President of the Division, three (3) Senior Level Managers, seven (7) Front Line Managers, ninety-five (95) Vocational Rehabilitation Consultants, two (2) Project Officers, and a support staff which includes ten (10) Vocational Coordinators, and eight (8) Case Assistants.

The organizational chart displayed in Figure 6.1 shows the current structure and management responsibilities assigned to each of the managers, along with the number of Vocational Rehabilitation Consultants supervised. While this structure accurately displays direct supervisory relationships among the vocational rehabilitation staff, the Compensation Services Division remains organized into SDLs where a matrix management structure is utilized. The great majority of vocational rehabilitation managers, regardless of their geographical responsibilities, are physically located at the WCB Richmond main office. Similarly, a majority of the vocational rehabilitation staff are centrally located at the Richmond main office. Two of the vocational rehabilitation managers have responsibility for the area office SDLs which cover all but the lower mainland area of the province. It should be noted that approximately 60 percent of all referrals come from the lower mainland area, and 40 percent from the area offices throughout the rest of the Province.

In the original Administrative Inventory we reported that staffing levels for the Department had increased from 58 in 1990 to 69 in 1991 or an increase of 16 percent. When reviewing staffing levels for the Department for the 10 years prior to 1991 an overall increase was noted. However, the actual number of consultants had dropped substantially in 1984–1987 (to a low of 41 in 1985), and then rebounded significantly, with a 19 percent gain in 1988, when 58 consultants were employed. The overall staffing pattern for this 10-year period suggests periods of stability (1981–83, 1989–90), decline (1984–87), and significant growth (1988 and 1991) in the number of consultants employed within the Department.

Since that time the number of consultants has grown from 69 in 1991 to 95 in 1995 or an increase of nearly 38 percent. It is further noted that 19 of these new consultants were hired in 1994 and 1995. Analysis of these hiring patterns reveals that only 49 percent (or 47 consultants) of the present staff were employed as Vocational Rehabilitation Consultants with the WCB in 1991. This reveals that although staffing patterns during this period (1991–1995) indicate

a significant increase in consultants, the proportion of new consultants among the WCB workforce is even greater than one would anticipate as a result of the attrition of more experienced consultants (31 percent of the 1991 staff) during this same period.

In addition, staff hired and trained during these various time periods were provided with varying levels of training and differing expectations regarding standards of performance, resulting in a very heterogeneous group of professionals. In addition, 19 (over 20 percent) of the current consultants were trained and employed in the field during a time (1993–1995) when there was virtually no formal clinical supervision or rehabilitation management support.

Over the years the manager's role has been adversely affected by the leadership limitations identified previously. There has also been a lack of formal training available for new and continuing management staff. The complexities associated with managing a professional vocational rehabilitation staff are daunting, particularly within a matrix management system. At the manager level, there has also been a great deal of turnover, even prior to the formal dissolution of the Department in 1993.

Within the new Departmental structure the seven front line managers within the Department supervise Vocational Rehabilitation Consultants with an average supervisory ratio of nearly 1 to 13, and when you add the additional responsibilities for supervising vocational coordinators and case assistants that ratio increases to approximately 1 to 15. This ratio alone, considering the varying levels of experience, education, and training among the Vocational Rehabilitation Consultants would appear to be excessive.

However, when one considers the added factor that vocational consultants are physically located in separate units within the WCB Richmond office and also located throughout the Province in area SDLs, the demands of vocational rehabilitation management take on even greater significance. (See Figure 6.1) These management challenges are further exacerbated by the nearly non-existent oversight, support and supervision provided to consultants over the past two and one-half years and the high proportion of newly hired and inexperienced consultants within the system.

During the past few years some progress has been made to develop an external advisory mechanism for vocational rehabilitation services provided at the WCB. In 1993, in accordance with the revised Chapter 11 of the *Rehabilitation Services and Claims Manual*, the Vocational Rehabilitation Services Advisory Council was established and regular quarterly meetings began. The Advisory Council was designed to represent community participants in the vocational rehabilitation process at the WCB. Worker, employer, and public interests in

vocational rehabilitation were each represented by three appointed Council members. The Council was to be supported by the Vocational Rehabilitation Services Department with the Director functioning as secretary to the Council and the Vice President of the Compensation Services Division acting as an ex-officio member. The central function of the Council is to act as an advisory body on matters affecting the delivery of quality vocational rehabilitation to workers in British Columbia. In carrying out this role the Council identifies and prioritizes policy and program issues for discussion and debate.

A review of the Council's Terms of Reference indicates four key areas of the mandate: consultation, policy review, policy development, and prioritizing issues. Since its inception in early 1993, the Council has met regularly to discharge its function. A review of the minutes and discussions with current Council members reveals a consistent attempt during this time for the Council to get a handle on the changing situation for vocational rehabilitation at the WCB, to review and discuss important policy issues (e.g., employability versus employment), and review expenditure patterns and return to work statistics generated by the Department's Case Management System. While the development of this Advisory Council appears to have been a very important step forward, it was implemented during a period of great instability, which clearly restricted its impact during the first two years of operation.

Finally, administration and management efforts of the Vocational Rehabilitation Services Department have been historically affected by the limited nature of information on services provided and outcomes attained to inform management decisions. While the Department does have the Case Management System which produces some basic information on services and outcomes, this system is viewed by everyone interviewed as insufficient (see later section for discussion). Clearly, more reliable information which is available on a timely basis is required for the management staff to analyse trends and monitor performance in the future.

Services and Resources

In this section the various services available and programmatic resources offered by the Board in support of vocational rehabilitation will be briefly reviewed. Depending on the individual worker's needs these services may be provided individually or as a continuum of services specified in the worker's vocational rehabilitation plan. While workers are awaiting or undertaking these services and programs, wage-loss equivalency benefits may be provided through the Department, assuming temporary wage-loss benefits have terminated. In

addition, transportation, subsistence allowances, and accommodation at the Board's Rehabilitation Residence may also be provided in support of vocational programs for the individual worker.

Worksite and Job Modification

During any phase of the vocational rehabilitation process, the Board may provide technical and financial assistance to modify jobs or alter worksites to accommodate and facilitate the return to work of injured workers in physically compatible working conditions. Modifications are undertaken in consultation with workers, employers, unions and treating professionals. When required, other expenditures, such as special equipment and tools, may be provided as well.

Vocational/Work Evaluations

There are various techniques and formal services available to the WCB to help assess the worker's capabilities and work potential, which can be utilized during any phase of the vocational rehabilitation process. Formal vocational assessments of interests, aptitude, achievement, intelligence and personality are available through referral to the Psychology Department. In addition, Vocational Evaluators within the Functional Evaluation Unit can provide certain types of formal testing (e.g., interest, aptitude, achievement, work samples), as can other similar assessment resources in the outlying community.

Work evaluations, which are defined by the WCB as a method of assessing a worker's employment capabilities and potential in an actual work environment with an employer, or in the simulated setting of the Board's Functional Evaluation Unit, are also available, depending on the needs of the individual case. Workers participating in a work evaluation program are provided financial assistance at wage-loss equivalency, and are not paid wages while being evaluated in an actual employer's worksite.

Job Search Assistance

For those workers who require assistance in securing employment, there are various services and formal programs available, as well as financial support that may be provided during the search process. These types of assistance would typically be introduced during the outplacement phase of the vocational rehabilitation process, and could include : (1) individual and/or group coun-

selling; (2) referral to internal resources, such as the Career Redirection and Job Search Skills Program; (3) referral to prospective employers; (4) referral to other agencies and external job search programs; and (5) the provision of a job search allowance.

The Career Redirection and Job Search Skills Program is located at the WCB Rehabilitation Centre in Richmond. A few years ago, in response to concerns about the nature and adequacy of services provided through the original Job Search Program, a program evaluation study was conducted. The conclusions drawn from the study's findings provided a series of recommendations for program improvement and expansion. These recommendations included: (1) lengthening the program to allow for more worker contact and in-depth assistance, (2) re-introduction of certain aspects of the Azerin Job Club model (e.g., practice interviewing, telephone contacts) (3) conduct more follow-up; (4) provide better services to the area offices; and (5) investigate the possibility of programmatic expansion to provide a full range of services (e.g., Manitoba program).

In response to these recommendations, management developed a comprehensive proposal to develop an Employment Resource Centre which would house the job search program along with an orientation program, resource library, assessment services (which included a specialized team that would perform employability assessments), and a research component. The focus of the proposed Centre was to provide not only job seeking skills, but also provide the information and support to assist with job placement for injured workers referred to this resource by consultants. Unfortunately, for budgetary reasons this proposal was not funded. However, the original Job Search Program was re-designed to include a career exploration component and re-named the Career Redirection and Job Search Skills Program.

This more comprehensive program now offers two weeks of training in career redirection followed by one week in job seeking skills development. During the Career Redirection component, workers assess their marketable assets and transferable skills. Further activities are focused on providing the workers with a view of today's labour market and specific training to develop skills to locate job options with their own transferable skills in mind. After this program, workers can receive training in job seeking through the Job Search Skills Program, which assists them to construct a functional resume, and builds skills on how to search for jobs and interviewing techniques.

Finally, during any point within the job search process, the Board can provide a discretionary benefit in the form of a job search allowance to workers who are actively seeking employment or attending the formal Job Search Program. The

amount of the allowance does not exceed wage-loss equivalency, and it is within the consultant's discretion to continue or suspend this type of support.

Training

There are two general types of training situations that are sponsored by the WCB. The first is training-on-the-job (TOJ), which may be provided at any phase of the vocational rehabilitation process and may include skill enhancement or the development of new occupational skills. The second type is formal training which relates to courses or programs which augment or upgrade a worker's existing skills or qualifications or provide for new occupational skills. Formal training is typically accessed during the retraining phase of the vocational rehabilitation process.

Training-on-the-job is identified as the preferred method of training by the WCB. This training approach is undertaken at an employer's worksite and is designed to provide the worker with specific skills leading directly to employment. A shared-cost arrangement is made with the employer to support this type of training program for the worker. This appears to be a very effective and widely used training/placement strategy. However, members of the Workers Compensation Advocacy Group argue that this approach is too often applied without adequate consideration of upgrading for future job security and career development.

Formal training may include full-time or part-time trade, technical or academic programs offered through recognized training or educational institutions. There are three different categories or levels of support offered by the WCB. The first category is for situations where the training is "directly related to the disability." In this case, the WCB provides the cost of any formal training program necessary to overcome the effects of a residual disability. The primary policy guideline used in these cases is that the WCB, where practical, should support a program sufficient to restore the worker to an occupational category comparable, in terms of earning capacity, to the pre-injury occupation. A secondary guideline used by consultants relates to the severity of the disability, where according to policy, the WCB will go to "greater lengths" and presumably greater expenditures for cases of severe disability, than when the impairment is less serious.

The second category of formal training is where the “training is related partly to the disability.” This would be in cases where injured workers decide that they want to utilize vocational rehabilitation training assistance to effect a general advancement of their education in order to upgrade the employment opportunities available to them. In cases such as these the consultant will estimate the total expenditure that would have been incurred under Section 16(1) of the Act if the worker had taken a program considered reasonably necessary to overcome the effects of the compensable injury. The worker is then offered that amount as a contribution towards the cost of the more advanced training selected. The WCB makes an exception of policy in this area for cases where the disability is very severe. In these situations the case is treated as it would be under the first category and is fully supported by the WCB.

The third training category is used in cases where the “training is unrelated to the disability,” and considered part of a typical career pattern of advancement unrelated to the disability. In these cases, while no support may be offered, the worker does sometimes have the option of a commutation of pension to help meet the costs of the program. Finally, in some situations the WCB may contribute to the costs of starting a business for a worker instead of providing formal training. The amount contributed would equal that which would have been spent on an appropriate training program for the worker.

Legal Services

In some cases legal services are provided as part of the worker’s vocational rehabilitation, at either the request of the worker or an officer of the WCB. Of course, legal advice is not provided in relation to any matter under adjudication at the WCB. Typical types of assistance may include indebtedness or insolvency, matrimonial problems, conveyancing, workers’ estates, and advice to a surviving spouse.

Services for Dependants

In cases where a worker’s death is compensable, the WCB has statutory authority to provide counselling and placement services to the surviving spouse and dependants. This could even include training assistance in situations where there is a need to improve the spouse’s earning capacity to support the family of the deceased worker.

Employability Assessments

One of the most difficult activities undertaken by the consultant is providing assistance in the assessment of employability for permanent partial disability under Sections 23(3) and 30(1) of the Workers' Compensation Act. (See Chapter 5 for an overview of the pension determination process.) Requests for this service are made by the Compensation Adjudicator in Disability Awards during the process of assessing permanent disability pensions when it is felt that, because of the compensable disability, the worker may sustain a loss of earnings which is greater than that compensated for under the physical impairment rating method of pension assessment. Vocational Rehabilitation Consultants receive an average of three to four requests for these assessments per month.

In conducting this assessment, the consultant is required to identify occupations that appear suitable and reasonably available to the worker over the long term future (short term for Section 30). In identifying the suitability of occupations and resultant wage earning capacity, the consultant is required to take into consideration the limitations imposed by the residual compensable disabilities, and the potential vocational rehabilitation measures or interventions that may be of assistance to the individual worker in pursuit of these reasonably available occupations.

This task requires a high degree of skill to identify occupations that are consistent with present physical limitations of the individual, and the ability to actually predict the potential earning capacity of the job if training and other theoretical interventions were applied. It is the predictive aspects of this process that appear problematic for the consultant in projecting the workers earning capacity. In cases of temporary partial disability, the consultant identifies suitable employment opportunities (as opposed to occupations), which are available immediately or within the period under review (2 weeks, one month). In making this determination the consultant needs to be reasonably certain that workers would have these opportunities open to them, should they wish to apply.

Resources and Programs

There are a number of other valuable resources and programs within the Board that consultants utilize to provide assistance to the worker during the vocational rehabilitation process. In addition, other community resources in outlying locations are also used to support the individual vocational rehabilitation process.

The WCB Rehabilitation Centre located in Richmond provides a comprehensive array of services and programs. This state of the art facility provides

comprehensive physical and occupational therapy services, as well as physical conditioning (e.g., work hardening). In 1994 the Centre served 3,186 injured workers, providing 67,863 days of treatment within its clinical programs. Recently two of the Programs (Functional Evaluation Unit and the Back Evaluation and Education Program) achieved accreditation for three years by the Commission on Accreditation of Rehabilitation Facilities (CARF). Specialized services are provided through the Head Injury Unit, Functional Evaluation Unit and the Back Evaluation and Education Programs (BEEP) where there are vocational rehabilitation consultants located within these units. They also provide a Hand Program, Amputee Program, and Lower Limb Orthotic Clinic. Located adjacent to the Centre is the Rehabilitation Centre Residence, which is a dormitory type residence available to workers who reside out of town, which can house up to 195 individuals who are receiving services at the Centre.

Recently, in addition to extensive preparation efforts related to attaining program accreditation, the management and staff of the WCB Rehabilitation Centre have been involved with the development and management of a preferred provider network and the further development of program evaluation capacities at the Centre. For the past two years, the Rehabilitation Centre has managed a fairly large preferred provider network throughout the Province. Development and management activities associated with these initiatives have included very detailed standards setting procedures, and a comprehensive quality management system. The Centre's Provincial Work Conditioning and Worksite Reintegration Program is an example of recent initiatives in this area. In addition, the Centre's Program Evaluation and Research Unit (PERU) has designed and carried out a number of operational evaluations in recent years. These evaluations have provided the basis for quality management, both within the Centre, and in the preferred provider network.

While all therapeutic areas of the Centre can contribute to the rehabilitation process, a few of these programs stand out for their unique services offered in vocational assessment and preparation for return to work. These programs would include the Psychology Department, Occupational Rehabilitation Program, and Functional Evaluation Unit. The Psychology Department of the WCB is utilized by Vocational Rehabilitation Consultants for formal interest, aptitude, achievement and personality testing as well as counselling services, when these services are required for vocational rehabilitation purposes.

The Occupational Therapy Program provides an impressive complement of assessment and therapeutic approaches which are geared to maximize work readiness. One particularly unique phase of this program provides the worker with exposure to industrial workshops, where occupational trainers work together with the therapist to train and evaluate the worker on real work tasks

and demands that are significant to the worker's vocational rehabilitation. In addition, through collaboration with the Functional Evaluation Unit, many of these tasks have been standardized and normed for performance reference and certification to potential employers.

Finally, the Functional Evaluation Unit (FEU) provides a very specific and unique resource for vocational planning purposes. The FEU can provide an objective appraisal of the worker's functional capacities and assists in the identification of suitable vocational alternatives for the purpose of return to work. This program, which has been in operation for about seven years, receives about 70 percent of its referrals from Vocational Rehabilitation Consultants. When a worker has medically plateaued, is no longer eligible for wage-loss payments, and a residual impairment brings into question the specific physical capacities of the individual, a two week evaluation is typically requested by consultants. The FEU utilizes standardized tasks within the Industrial Workshops, commercial work samples, and an array of technological tools and equipment which have been programmed and modified specifically to measure various physical capacities. These results are then related to the requirements of specific jobs to identify suitable employment for further exploration.

While these extensive resources at the Rehabilitation Centre are readily available to workers in the lower mainland area of the province, they are at times difficult for workers to access from more remote geographic areas. In these cases consultants from the area offices, where approximately 40 percent of the vocational rehabilitation referrals originate, have sought relationships with local service providers in an attempt to develop needed resources, in addition to utilizing services available at the Rehabilitation Centre. However, even with local resource utilization, the area offices appear to be at a disadvantage in relation to accessible services and programs.

Computer Support

As indicated previously there is presently a critical need to upgrade the level of computer support available to consultants in performing their responsibilities. Current job matching and exploration programs and the case management computer tracking system are in critical need of upgrading/and or replacement. These products were for the most part designed and implemented through the Research and Development unit in the Department. Specific software available includes: Vocational Rehabilitation Program, the WCB Automated Wage Loss System, Case Management System, Discovery Training Network, and a variety of other support software (e.g., Writing Assistant, Filing Assistant, MS Word, Harvard Graphics).

The Vocational Rehabilitation Program, which was developed internally in 1987, was the first computerized resource for the consultant which assisted with job matching. This system, which is still in operation, is in critical need of updating. Other systems, however, are now available, such as Discovery which provides training resource information. Other job matching systems commercially available are currently being evaluated for their potential application.

One of the problems experienced in the past was the lack of support available from Information Services Division because of the unique needs of the Department. For example, the development of the Case Management System was done almost entirely from within the Department as a result of the anticipated time delays in development if the request had been made through ISD.

The research and development section of the Department appears to be operating with minimal staff and resources. The fact that they have been able to develop, implement and maintain systems to assist the consultants and the overall Department is noteworthy. However, there are many areas that are in critical need of additional development and expansion, including the full development of a management information system, ongoing research on outcomes and program effectiveness, and the development of effective marketing tools for the Department.

Program Evaluation

While individual consultants are required to follow-up on cases receiving services, the Department currently does not have an adequate system to determine the total effectiveness of services provided to injured workers. The Department implemented the Case Management System nearly four years ago, which has provided basic information on placement rates and types of return to work outcomes attained. Prior to this, statistics related to outcomes were not available at all. However, without comprehensive data on inputs and outcomes it is not possible to make an adequate assessment of the total effectiveness, quality, or cost benefit of services provided. This lack of program evaluation data and management information is critical to the effective delivery of vocational rehabilitation services and needs to be addressed immediately.

The Vocational Rehabilitation Consultant

The Vocational Rehabilitation Consultant (VRC) is the principal service provider and coordinator of all individual vocational rehabilitation services provided by the WCB. In this role the Vocational Rehabilitation Consultant determines the nature and extent of the vocational rehabilitation services to be provided to injured workers.

According to the Board's official position description, the function of the consultant is as follows.

The Vocational Rehabilitation Consultant is responsible for: expediting the return to employment of injured workers through the assessment of the employment handicap and the implementation of appropriate programs or training that may be required to facilitate their return; conducting job searches; preparing employability assessments; adjudicating, managing and expediting rehabilitation expenditures; participating in Job Search Techniques Program; and for other related duties.

In order to effectively perform this multifaceted professional role of providing individualized services to injured workers with various backgrounds, functional impairments, and needs, an array of competencies are required of the Vocational Rehabilitation Consultant. These professional competencies would include knowledge and skills in vocational assessment and planning, vocational and personal adjustment counselling, case management and coordination, and employer development and job placement. In addition, the consultant is required to have knowledge of the functional and psychosocial impacts of disability, the ability to utilize occupational and labour market information, and detailed knowledge of WCB policies and procedures, particularly in relation to their adjudication function.

While there were no specific data available to determine the proportion of consultant time allocated to the various functions performed, there are well detailed descriptions of the responsibilities, functions and activities of the consultant in the official position description and in other descriptive information (e.g., Chapter 11, *Rehabilitation Services and Claims Manual, Vocational Rehabilitation Services Procedure Handbook*) on the consultant's role. To get a more complete understanding of these responsibilities and duties, a number of consultants were interviewed and observed at various locations within the province. (See Appendix Table A —2 for a list of individuals interviewed)

For the typical consultant working with a general caseload the service delivery process begins when medical opinion indicates that the worker has

physically plateaued, but has residual problems resulting from the impairment that constitute barriers to return to work. For other consultants, such as those working with specialized caseloads (e.g., spinal cord and other severe impairments), first involvement with the case would occur at a much earlier point in the medical rehabilitation process. In most situations, at this point a team meeting is called involving the Claims Adjudicator, Vocational Rehabilitation Consultant, Unit Medical Adviser and a Claims Adjudicator from Disability Awards. (See Chapter 5 for a more complete description) During this meeting, in addition to a full review of the case, decisions are made regarding the stoppage of wage-loss benefits, and the potential need for the utilization of income continuity or "Code R" benefits.

One of the first functions performed by the Vocational Rehabilitation Consultant is the assessment of employment handicap of the injured worker and the evaluation of socioeconomic factors that surround the specific situation. This is done initially through a comprehensive review of the case file including memos, medical reports, correspondence and other pertinent records. The formal decision to open a vocational rehabilitation case is based on this review process. Following this review, and initiation of the case within the Case Management System (computerized client tracking system), interviews would be conducted with the injured worker, accident employer, union representative, and when considered appropriate, members of the worker's family. Information collected through these sources, and any formal testing or evaluations requested from the Functional Evaluation Unit, Psychology Department, or similar external resource are utilized in the development of the initial vocational assessment on the worker.

Once this initial information has been developed, the consultant along with the worker, develop and implement a vocational rehabilitation plan designed to expedite the worker's return to the labour force in accordance with a 5-phase model of the vocational rehabilitation process (discussed in detail later). In developing this plan the consultant will first explore potential options for return to work with the accident employer, including potential job or work-site modifications, or any retraining that may be required, and document the outcomes of these contacts. Sometimes, further testing in relation to physical capacities is performed at this point in order to assist in matching the capabilities of the worker with the requirements of various jobs. The need for formal or informal training (TOJ) is determined, as well as any required job search assistance. Throughout this period, supportive counselling is utilized by the consultant to assist in the problem solving process, plan development, and implementation.

Consultants are also required to assess the special needs of seriously disabled workers and develop recommendations with respect to both employment and daily living needs and care. In addition, an array of modification services are available, including home modifications, drivers training, and vehicle modification. (See Chapter 5) In these situations, although the consultant can call on other professionals at the Board to assist with decision making, he/she must be able to recognize the functional impact of the impairment on employment and independent living needs, and take the steps required to resolve these complex issues for the seriously disabled worker. Other case management and coordination functions include the ability to authorize or deny income continuity payments to workers, and to adjudicate, manage and expedite vocational rehabilitation expenditures in support of vocational rehabilitation plans with individual workers.

Additional significant functions required of the consultant include providing services (e.g., counselling, retraining and placement) and information to widows and dependants of workers involved in fatal industrial accidents or disease. Vocational Rehabilitation Consultants also conduct surveys of business establishments and develop relationships with the employer community to obtain job vacancies suitable for specific injured workers, as well as establish ongoing relationships with other community service providers that might be utilized for vocational rehabilitation purposes. And finally, consultants provide services to other departments within the WCB, such as conducting employability assessments for Disability Awards to support the computation of loss of earnings pension awards for workers. (See Chapter 5 for details)

While some specific case management and caseload management issues will be discussed later in this chapter, there are a number of issues and trends that have emerged in recent years that appear to have significantly affected the way that consultants perform their roles and the amount of time they devote to various functions involved in the vocational rehabilitation process. For example, a consistent observation made by consultants during the interview process was that they now spend more time than ever working at their desks rather than in the community in the performance of their roles. Some estimates of the proportion of time devoted to community based activities (e.g., working directly with accident employers, employer and community resource development, on site client visits) were as low as 20 percent.

Evidence in support of this change in recent years is the significant decrease noted in travel reimbursement and the number of miles put on WCB vehicles by consultants, even in the outlying area SDLs. Documentation requirements, increased demands for service coordination (external referrals), and more complex

and demanding cases were cited as the primary reasons for this change by consultants. While the specific factors affecting this trend are most likely to be multidimensional and require careful analysis, the result of decreased time in the field appears to have directly impacted the consultants' ability to intervene early with the accident employer, actively assist with employer development and placement activities and develop meaningful relationships with external providers and resources that could further support rehabilitation efforts in the community.

Partially in response to these issues the Department created the position of Vocational Coordinator within each of the SDLs to assist consultants with managing and expediting rehabilitation expenditures for clients on their caseloads. While this is almost uniformly acknowledged by consultants as an improvement in the system, it does not appear to have had a significant impact on freeing up additional time for consultants to spend in the field in the performance of their responsibilities.

Education and Experience

There are presently 95 Vocational Rehabilitation Consultants employed by the WCB. In terms of educational background, 24 percent of these individuals have attained a masters degree or higher (23 Vocational Rehabilitation Consultant's), and 76 percent have a bachelors degree or lower (72 Vocational Rehabilitation Consultants). The majority of degrees awarded were in counseling or related human service fields. In terms of professional certification, 22 percent (21 Vocational Rehabilitation Consultants) have attained their Canadian Certified Rehabilitation Counsellor (CCRC) credential.

The experience levels of the Vocational Rehabilitation Consultants were also reviewed, including the number of years as a consultant with the WCB and their overall vocational rehabilitation experience. In calculating the overall experience, the definition of acceptable work experience used by the Canadian Association of Rehabilitation Professionals (CARP) was applied. As shown in Table 6.1 a large proportion of consultants have been with the organization for less than three years. In fact, nearly 43 percent of all consultants have less than three years of experience in their present role, and 58 percent of all consultants would fall below the 5-year experience level.

These figures would indicate that a substantial proportion of the staff have had limited experience within their present role, especially significant because of the lack of direct pre-service preparation. One aspect which may qualify this concern is the number of total years of vocational rehabilitation experience. As indicated in Table 6.1, the majority of staff have had much higher general levels

of experience than specific experience with the WCB, with only 25 percent demonstrating less than five years of total vocational rehabilitation work experience.

Formal Training

Given the expanding knowledge and skill competencies required of Vocational Rehabilitation Consultants to effectively address the potentially complex needs of the injured worker, and the lack of pre-service educational programs available to specifically prepare individuals for these roles, the orientation and training program offered by the WCB for new employees plays an extremely significant role in the Department. One very important improvement in recent years was the development by the Training and Educational Centre (TEC) of a comprehensive *Vocational Rehabilitation Services Procedure Handbook*. This handbook provides consultants with detailed information and procedural requirements of Vocational Rehabilitation Services. The handbook is used extensively during the formal training phase and then as a reference guide for consultants once they begin practice in the field. During the past few years the formal training available at the WCB for new consultants has undergone considerable revision and enhancement. Unfortunately, the TEC has recently been dismantled, at least for the present time, with all but one of the trainers re-assigned back to claims and consultant roles throughout the Province.

In terms of the formal training program that had been developed for Vocational Rehabilitation Consultants, there has been over the past few years attempts made to enhance the practical or field based experience associated with the core training curriculum. This was apparently in response to the need to create a balance between core training and practicum, as well as to make the training more competency based and individually driven. In response, the training staff began to introduce casework at a much earlier stage in the 12-week class portion of the core training process, and simultaneously developed more focus on longer term practicums with mentorship. Some of the key problems encountered by the training staff with this model was the limited, or sometimes non-existent, standards of performance for consultants in the field, and the fact that they lost control of the quality of the training (and selection of appropriate mentors) once the individual began the field-based portion of the overall training curriculum.

Clearly, given the critical need for of formal training for new consultants the virtual shutdown of the TEC unit will hopefully be only temporary. There appears to be a significant need to develop a mechanism where training, policy

development and activities in the field are coordinated. Standards of performance and clear expectations need to be set at all levels so that there is a close relationship between training and the demands and expectations of practice, and so that each of these components helps inform the other.

Clinical Supervision and Standards of Practice

Given the fact that there was virtually no structure to provide supervision over the past two years combined with the limited experience of a number of consultants (e.g., 43 percent with less than three years job tenure), systematic clinical supervision, ongoing training and quality assurance appear critically deficient. Addressing this concern appears to be a high priority of the new management structure in the Department. However, as indicated previously, even with the newly designed organizational structure there are serious barriers to effectively carrying out these important supervisory tasks.

During recent years, in the absence of relevant supervisory support a practice referred to as the Team Decision-Making Model developed. In this model consultants assigned to a particular SDL met regularly to review cases and approve individual rehabilitation plans and budgets (up to a maximum of \$10,000 per case). The effectiveness of this group decision model appears quite variable, particularly in the oversight and budget approval process. This practice was terminated in the SDLs when the new management structure was implemented. However, during the period when there were no rehabilitation managers to provide support, policy clarification, and clinical supervision, this model served as a method of peer support to review plans and problems and to get suggestions from other colleagues.

Overall, the impact of the lack of supervision, oversight and accountability during this period appears to have had very detrimental effects on the performance and morale of Vocational Rehabilitation Consultants in the field. Many consultants we spoke to indicated that they had not had a performance evaluation in the last two to three years, and were uncertain what the performance expectations actually were. Most consultants reported a sense of professional isolation within the SDLs that contributed further to a sense of confusion, lack of direction and lessened confidence that they were practising in accordance with expected guidelines.

With the implementation of the new management structure in June of 1995, the senior level and front line management staff began a series of initiatives to further assess this situation. They intend to implement a series of intervention and support activities to clarify expectations, establish a stronger foundation of

skills and knowledge of policy in the field, and get back to the basics in relation to the role and function of the consultant in case management and return to work services. For example, the process of approving budgets and case review was modified to occur at certain time frames within the rehabilitation process for individual cases rather than being solely prompted by exceeding a specified spending level per case. While it is too early to assess the sustained impact of these initiatives, the initial response from both management staff and consultants was quite positive.

In addition to concerns at the individual consultant level for increased levels of clinical supervision and accountability, there continues to exist a critical need to develop Department wide guidelines, with clear expectations and standards of practice regarding the provision of vocational rehabilitation services. Much of the activity generated a few years ago to clarify policy issues and set service delivery expectations came to an abrupt halt with the dissolution of the Departmental infrastructure. Some of these initiatives, such as efforts to clarify the employment/employability issue and the initial design of case management standards and performance profiles are very much needed by managers and consultants today.

While the recent development of the new *Vocational Rehabilitation Services Procedure Handbook* represents a major step forward in providing uniform guidance in relation to procedural requirements, it does not adequately address expectations, provide guidelines for dealing with various case management issues and problems, nor set clear standards of performance for the consultants. There are a number of other emerging issues related to service provision, such as preventative rehabilitation, non-compensable issues, psychological issues (e.g., depression, chronic pain and subjective complaint) and substance abuse that require policy clarification for consultants and clearer guidance and expectations regarding how the consultants deal with these issues on their caseloads.

Professional Development

At the present time, the official job description for the Vocational Rehabilitation Consultant requires only a bachelors degree in social sciences, humanities, and/or commerce and does not specify a preference for, or requirement of, certification (CCRC) or professional membership. These requirements and the subsequent level of education attained by the majority of consultants at the WCB (76 percent at the bachelors level or below) underscore the critical need for the Department to address the ongoing professional development of consultants through systematic continuing education and in-service training programs. Finally, while there has been a substantial amount of development activity per-

formed by a number of local professionals, including WCB personnel over the years, to develop a graduate training program in vocational rehabilitation counselling at a university in British Columbia, the outcome of these efforts is uncertain at this time.

Vocational Rehabilitation Process

The vocational rehabilitation process utilized by the WCB is structured to provide individualized services to injured workers depending on the unique needs and circumstances of each case. During the process, ongoing medical opinion, and various WCB and community resources assist the consultant and the worker in developing and implementing a vocational rehabilitation plan. Ongoing consultation with the worker, the accident employer, and where applicable the union, are emphasized by Department policy in order to maximize all possible opportunities for re-employment. The vocational rehabilitation process, when operationalized, involves five sequential phases of what is termed vocational exploration, which appears very similar to most models used in workers' compensation return to work programs. Figure 6.2 provides a visual display of this Case Management Model which is used as a guide by WCB consultants.

In the first phase of this process all efforts should be made to assist the worker to return to the same job with the accident employer. Typical service interventions might include programs of physical conditioning or work hardening, graduated return to work (work assessments), work evaluation, and refresher training or skill upgrading.

In Phase 2, when it has been determined that the worker cannot return to the same job, the accident employer is encouraged and assisted by the consultant to make worksite accommodations and job modifications or provide alternative in-service placement. Similar interventions are provided in this phase as described above, but in addition worksite/job modification and/or supplementary skill development involving training-on-the-job and/or formal training may be required.

Both Phases 1 and 2 relate to the return to work with the accident employer's organization. If the past employer is unable or unwilling to accommodate the worker in any capacity, the strategy shifts to Phase 3 where vocational exploration is utilized to identify suitable occupational options in the same or related industrial sector, capitalizing on the worker's directly transferable skills.

If a wider more inclusive search is required in situations where the worker is unable to return to alternative employment in the same or related industry the strategy will shift to Phase 4 where vocational exploration will progress to suit-

able occupational opportunities in all industries, emphasizing the worker's profile of transferable skills, aptitudes and interests. The programs and interventions used by the consultant and worker in the preceding phases may apply to these cases, and in addition job search assistance may be provided.

Finally, Phase 5 is utilized if existing skills are insufficient to restore the worker to suitable employment, and the development of new occupational skills is required. In this phase, training programs are used for the development of new occupational skills, as well as the application of required interventions used in the previous phases to help the worker secure employment once trained.

While this 5-phase hierarchical model of vocational exploration appears quite clear, the expected level of involvement of the consultant in actually facilitating the return to work of an injured worker appears more open to individual consultant interpretation of their role and the required assistance of the worker. In Chapter 11 of the *Claims and Rehabilitation Service Manual* it states that "the consultative process is guided by the Vocational Rehabilitation Consultant in response to the worker's determination for vocational success. While it is up to the consultant to assess workers' needs and appropriate levels of rehabilitation assistance, it is ultimately the responsibility of workers to decide their own vocational future."

One of the principle issues that emerges when discussing the vocational rehabilitation process is expected outcome. While a great deal of divergent opinion exists among consultants, managers, and worker advocates, the issues appear to centre around whether the WCB's mission is to provide services to injured workers to enhance "employability," or to focus on "placement" and the return to actual employment. A related and even more relevant question is at what point in the process have sufficient services and resources been applied to terminate the case without an employment outcome? A problem that could be exacerbated by these issues is when permanent disability loss of earnings pensions are based on "deemed" jobs rather than actual post-injury employment.

The deeming process is used in situations where the consultant, using all available information, makes the judgment that a worker is capable of performing a particular job or occupation, and that the job is reasonably available to the worker. Once the consultant has "deemed" the job, the worker is treated by the WCB as if this is an accomplished fact. While there is certainly a legitimate need for such a procedure in cases of last resort, significant potential exists for over-use of the "deeming process" in situations where the policy focus is on developing employability rather than actual placement (particularly in absence of clear standards and expectations).

While it is quite normal for Boards to focus on employability rather than employment when vocational rehabilitation is viewed as discretionary within

workers' compensation systems, policy clarification is clearly warranted in this case, based on the amount of uncertainty observed and the formal requests made recently from consultants for a reaffirmation of the WCB's commitment to help injured workers return to employment. If the policy of the WCB was to enhance the commitment to return to work services with placement as the goal, then it could be anticipated that a number of changes would result. For instance, a greater proportion of consultant time would be devoted to employer development and placement related services, which may affect current staffing patterns and professional training needs. Over the past few years there continues to be uncertainty regarding these issues among consultants. As indicated previously some preliminary efforts were initiated approximately two years ago to review these issues and develop clear policy guidance for the Department. However, this process stopped as a result of the before mentioned changes in the organizational structure.

Referrals and Early Intervention

The referral process for vocational rehabilitation services along with criteria and procedures are well developed. There does, however, appear to be great variability experienced in the timing of the referral to the consultant and in the level of effort by the consultant to intervene quickly once the referral has been made. In relation to promoting early intervention efforts at the Board, certain types of impairments such as spinal cord injuries and other severe disabilities (e.g., traumatic brain injuries, amputations) receive immediate attention by the consultants. For example, in units of the Rehabilitation Centre which specialize in providing services to severely injured workers, Vocational Rehabilitation Consultants join an interdisciplinary team early in the total rehabilitation process to provide consultation and assist with problem solving.

Administrators at the WCB Rehabilitation Centre appear interested in re-focusing their efforts toward return to work and moving toward earlier intervention, and expansion of the role of the Vocational Rehabilitation Consultant within the team approach at the Centre. Throughout the WCB, while there appears to be general agreement regarding the potential value of early intervention efforts by the consultant, there are also some serious barriers to this involvement that require attention. These include natural time delays in the claims adjudication process, situations where there are discrepancies between worker subjective complaints and medical evidence, caseload demands, and a growing trend, previously discussed where consultants are spending more of their time working at their desks and less time with employers (in this case particularly the accident employer) and in the community.

Vocational Rehabilitation Planning

At the beginning of the vocational rehabilitation process, following initial vocational assessment, the consultant and the worker devise an interim vocational rehabilitation plan that generally identifies objectives, services to be provided, responsibilities and time frames. The plan is a critical document, directly linked to the 5-phase model of vocational exploration, and it is intended to be dynamic, with changes made to the plan when required and accompanied by appropriate documentation. In developing this type of individualized, written vocational rehabilitation/expenditure plan, the consultant is required to review and report on background and medical information, and identify what vocational rehabilitation actions have been taken. Conclusions from Functional Evaluation Unit assessments or permanent functional impairment conclusions regarding physical capacities are identified and vocational rehabilitation options explored in consideration of these factors and transferable skills. In developing this plan, specific vocational recommendations are identified including supporting rationale and a strategy to monitor plan implementation.

External Factors Affecting Rehabilitation

In addition to those internal factors cited already in this chapter, there are a number of external factors and trends which are affecting the provision of vocational rehabilitation services and the attainment of planned outcomes. These factors need to be considered in the clarification and further development of policy and standards of practice within the Department and carefully studied in order to develop new strategies and technologies for improving service delivery.

Central to any discussion of external factors is the changing nature of the labour market and of available opportunities for workers displaced by virtue of disability to re-enter and sustain suitable employment. These labour market changes are similar to other localities where down-sizing, technology and other adjustments are made to enhance productivity and profitability. These have resulted in changes in the job market that have made it more difficult to locate suitable employment options for injured workers. These issues are also affecting other vocational rehabilitation service providers in the private sector within the province. They have experienced a drop in their placement rates in recent years and report more difficulty locating appropriate employment opportunities for the clients they serve.

Clearly, two issues emerge from these factors that require immediate attention by the Department. First, the increased difficulty in locating new

employment options underscores the need to optimize the workers attachment to the accident employer (Phase 1 & 2 of Case Management Model). This requires that consultants and the entire adjudication/rehabilitation process focus more on early intervention techniques consistent with established disability management principles. These earlier disability management efforts would also occur during the 2 – year period when there are still financial incentives (e.g., assessment rates) for the employer to participate in return to work efforts. As discussed in Chapter 7, after two years the employer no longer bears the individual responsibility for claim costs under the ERA system.

Secondly, given the growing complexity and change within the job market there appears to be no question among consultants and management staff that additional resource tools, software and technology are needed for consultants to access labour market information, and employment leads as well as to perform transferable skills analyses and job matching. A few years ago management developed a comprehensive plan to address these issues, however, the plan was not implemented due to budgetary constraints. Today these needs are even more critical.

Although the vocational rehabilitation process described previously is utilized throughout the WCB, there are some unique geographic and industry factors that greatly affect employment opportunities and resources available in some of the more remote areas of the province. These issues are characterized by a general limitation of opportunities for reemployment following injury, and typically result in expanded consultant time on complex cases, extensive travel, and the need for creative problem solving. For the injured worker in these locations, the vocational rehabilitation process becomes very difficult as well, particularly if they were previously employed in high wage occupations (e.g., faller, logging industry), have limited formal education, and/or do not wish to relocate their families to more urban areas where expanded opportunities for training and reemployment may exist.

The impact of these external employment factors is further exacerbated by ongoing changes in the demographics of the workforce and of those individuals who sustain work related injuries and illness. As the workforce ages, more and more older workers are being served by the Department. Oftentimes these individuals present unique challenges to vocational rehabilitation efforts, including limited education and transferable skills and other non-compensable aspects of the injury that present significant barriers to re-establishing employment. These may act as further worker disincentives for early return to work and positive employment outcomes. Given the changes in the labour market, demographics and the non-compensable barriers to employment that injured

workers often present, there is a critical need to study these issues through ongoing research efforts to provide the Department with the kind of information required to appropriately inform future policy and practice.

Another external factor which appears to have had a growing impact on vocational rehabilitation efforts and services provided over the past 4 – year period is the increase in the level and sophistication of outside advocacy efforts. Advocates and workers are more knowledgeable about the system and are more likely than ever to exercise their rights in advocating for their preference of services and outcomes in the process. While as a whole this can be viewed as a positive development, the reactions of the Vocational Rehabilitation Consultants to these new factors has been problematic. For example, many consultants cited this issue as driving the need for increased levels of internal documentation in order to justify decisions that may be appealed in the future. Others felt that consultants were more likely to respond to worker preferences than to provide an objective assessment of needs, to avoid confrontation and the appeals process.

In discussions with advocates there appear to be a number of issues where a general consensus of opinion exists among these representatives in relation to vocational rehabilitation services provided at the WCB. For example, some of the major concerns related to the lack of early intervention efforts with the client and employer, and attempting to maintain worker attachment. These representatives felt that the WCB should put more pressure on employers to participate in return to work efforts. Delays in the system were seen as a significant concern and related to the increased costs of the Department. Further, the focus of the Department was perceived as centering on wage loss as opposed to rehabilitation service provision. They also expressed concern about the entire claims and rehabilitation process, pointing out the negative effects of the linear nature of the process and the fact that only one issue at a time is dealt with, as opposed to bringing together all available resources to address the issues in an efficient and effective manner. Finally, they expressed concern about the qualifications, training and credentials of the Vocational Rehabilitation Consultants in providing vocational rehabilitation services to injured workers.

Service Delivery Outcomes

From 1992 through June of 1995, a total of 8,440 injured workers returned to work after receiving various levels of vocational rehabilitation services at the WCB. During this same general period referrals for vocational rehabilitation services dropped from approximately 11,700 in 1991 to 8,700 in 1994. Meanwhile expenditures for services rose dramatically from \$20,352,282 in 1991 to

\$68,606,888 in 1994 (50 percent annual increase). Vocational rehabilitation expenditures accounted for approximately 9 percent of all accident fund payments by the WCB in 1994, up from just 4 percent in 1991.

Data on outcome measures and other related case information are collected through the Department's Case Management System. While there have been some minor enhancements made to this system since its introduction in 1991, it is capable of providing only very fundamental information for analysing the impact of services provided to injured workers throughout the Province. In addition, there are presently only five performance indicators used by the Department to monitor their referrals, services provided and outcomes. These include: number of re-openings or referrals, length of time per opening, expenditures by code (types of expenditures), number of workers who return to work by type of return (e.g., same job/same employer), and the number of workers whose cases are closed but do not return to employment. At present the principal performance measure for vocational rehabilitation services appear to be its total expenditures for services provided and the single benefit indicator of return to work.

In Table 6.2, return to work figures generated from the Case Management System are displayed for 1992 through 1995 by the type of return to work outcome attained. It should be noted that the 1995 figures reflect only the six months of data available at the time of this review. As indicated in Table 6.2, of the 8,440 workers who successfully returned to work following services during this period, 39 percent returned to their old job with the same accident employer, 15 percent attained a new job with the same accident employer, 11 percent attained a new job with a new employer in the same industry, 20 percent attained a new job with a new employer in a new industry, 5 percent received formal training and a job with a new employer, and 10 percent became self employed. In total, 54 percent of those who returned to work did so with their accident employer either in the same job, a modified job, or in a new position. In addition 36 percent attained employment in a new job with a new employer during this period.

Further review of these data indicates what appears to be a great deal of stability in the proportion of workers in each of the closure categories from year to year, even though the total number of placements fluctuates. The only exception to this appears to be a significant drop off in the proportion of workers who regained their old job with the accident employer from a high of 47 percent in 1992 to a low of approximately 35 percent in 1995. Finally, it should also be noted that in general the number of successful closures appears to be increasing from year to year, with the exception of the slight drop from 1993 to 1994. In fact, if one were to estimate the number of successful closures in 1995

from the data obtained at the mid-way point of the calendar year, one could anticipate as many as 2,848 individuals returning to work in 1995 or an increase of approximately 14 percent over the numbers from 1994.

While these data are helpful in reviewing overall patterns and types of return to work outcomes achieved by workers following vocational rehabilitation services, they do not provide information on the specific placement rates or successful return to work rates achieved during this period when considering all case closures that occurred. Although complete data on return to work rates are not available for the entire period of time covered in Table 6.2, data are available on these rates for 1994 and 1995. As indicated in Table 6.3 the placement rates achieved during 1994 and 1995 are 49 and 48 percent respectively.

These rates are computed by dividing the number of number of successful return to work outcomes by the total number of outcomes (successful and not successful), excluding those cases where there was only limited intervention involved. Limited intervention refers to situations where minor assistance is provided by the consultant to a case, but no rehabilitation plan or expenditures are required. If one were to include this latter group the rates would drop to 29 percent in 1994 and 30 percent in 1995. Generally speaking, these rates would be roughly comparable to the average workers' compensation programs where vocational services are either provided or purchased externally. They indicate moderate effectiveness in returning injured workers to employment.

While there is a paucity of information available other than that reported above regarding the effectiveness of services provided and outcomes achieved, there was a more comprehensive evaluation study of vocational rehabilitation conducted in 1993 through the Internal Audit and Evaluation Program at the WCB. This study, titled "Vocational Rehabilitation Interventions Evaluation Study (Back Injury Claims)" was published in 1994. The purpose of the study was to evaluate the delivery, impacts and costs associated with the Board's provision of vocational rehabilitation services. The study employed various methodologies in the evaluation, from a review of the literature to a survey of workers and employers served by the Department. For the claims specific aspects of the study, the evaluation confined its scope to workers with back injuries who received vocational rehabilitation services at the WCB between 1989 and 1992.

As part of the study, return to work rates were computed for those workers surveyed who had received vocational rehabilitation services during the prescribed time period. Among the 568 back injured workers who received services, 59 percent reported that they had returned to work during or at the completion of services provided by the Department. These numbers are significantly higher than the overall rates reported above for the 1994 and 1995 period. It should be

pointed out, however, that in the evaluation study only back injured workers were surveyed, while the figures reported earlier relate to all injured workers whose case had been closed during 1994 and 1995.

The Vocational Rehabilitation Interventions Evaluation Study concluded by making 18 separate recommendations that relate to the entire spectrum of vocational rehabilitation service provision at the WCB. These recommendations are currently under review by senior management staff in the new Departmental structure. The study's overall conclusions were as follows:

1. The majority of referrals to Vocational Rehabilitation are appropriate, but the processes used to refer workers to, and determine their eligibility for, vocational rehabilitation services could be substantially improved.
2. Vocational rehabilitation service delivery is inconsistent across cases, there are many delays in the vocational rehabilitation process, and the interactions between parties involved in the process could be enhanced.
3. The program is moderately effective in terms of return to work and other vocational rehabilitation outcomes, but worker satisfaction with these services is relatively low. Further, while costs are rapidly increasing, there is no evidence that successful outcomes are increasing to the same extent.
4. Systemic limitations are having a substantial impact on the program's ability to be successful. Without addressing these limitations, the effectiveness of the Board's vocational rehabilitation services cannot be improved to its fullest extent.

While these evaluation data, conclusions, and recommendations are principally related to a back injury population served by the WCB some years ago (1989–92) the findings appear for the most part consistent with the observations made in the original Administrative Inventory and the current review. This also represents the first large scale evaluation study of vocational rehabilitation services at the WCB. These types of evaluation efforts are critical to further analyse the effectiveness of the system.

Expenditure Patterns

In 1994, which represents the last calendar year of complete data, the WCB spent \$68,606,888 on injured workers through its provision of vocational rehabilitation services.¹ As indicated previously this represents a 50 percent annual rate of increase in expenditures from 1991 when \$20,352,282 was spent on the

delivery of services. Further, this increase occurred during a period where new referrals for services actually decreased from approximately 11,700 in 1991 to 8,700 in 1994 (declining by 9.4 percent per year). Figure 6.3 depicts the expenditure pattern for vocational rehabilitation services from 1986 through 1994. As indicated in Figure 6.3, the pattern suggests a period of modest growth from 1986 through 1990, followed by a period of great acceleration in expenditures from 1991 through 1994. Although data from 1995 are not included in this display, a similar pattern of increase from previous years was anticipated as a result of the mid-year figures.

A review of the growth in the types of expenditures made during each of these years provides a clearer picture of the changing pattern of expenditures and of services delivered during the period. As indicated in Table 6.4, 4 of the 12 expenditure areas in particular grew at rates far above the average during this period, they included: job search allowances (Code E), miscellaneous (Code M), formal training (Code G) and income continuity (Code R).

Job search allowances (Code E) represents the single greatest expenditure type over the past 4-year period. According to the *Vocational Rehabilitation Services Procedure Handbook*, this rehabilitation allowance is provided to assist workers who are actively seeking employment. It may also be paid to workers who are waiting for a definite job opportunity, a TOJ, formal training, or development of some other vocational plan. Code E is a wage loss equivalency code that cannot exceed the wage loss rate, less any appropriate disability pension payable. As indicated in Table 6.4, since 1991 when expenditures in this area were \$5,172,421, spending rose during 1992 and 1993 at an average annual increase of 81 percent with a 39 percent increase noted in 1994, for a total annual expenditure of \$23,538,234. These expenditure patterns seem to demonstrate that during the past 4-year period more emphasis has been given to the return to work objective. However, as noted previously these efforts do not appear to have substantially changed the placement rates attained by the Department.

Code M or miscellaneous expenditures relate to moving costs, alterations to a worksite, business start-up costs, computer supplies, or special equipment and tools that are considered part of a rehabilitation plan. Since 1991 when spending in this area was at \$1,084,099, expenditures nearly tripled in 1992, and doubled in each of the next two years for a total annual expenditure in 1994 of

¹ This figure does not include the reserves for future vocational rehabilitation expenditures, which totaled an addition \$50 million.

\$13,484,287. This area clearly represents the sharpest rate of growth of all expenditures by the Department. Although there is some evidence to suggest that business start-up costs are contributing the most to this cost escalation, management is currently reviewing a report on Code M expenditures prepared by Internal Audit and Evaluation that studies this issue in detail.

Formal training allowances (Code G) are provided to assist workers who are undertaking courses or programs which augment or upgrade their existing skills or qualifications or which provide new occupational skills. Code G is a wage-loss equivalency code and is a discretionary payment conditional upon the worker's attendance and performance in the training program. Since 1991, when spending in this area was at \$2,625,092, expenditures doubled in 1992 then grew at a decreasing rate thereafter with increases of 62 percent in 1993 and 24 percent in 1994, for a total annual expenditure of \$10, 981,899.

Code R or income continuity benefits are intended to bridge the time between the conclusion of wage loss and the commencement of long term benefits, which may be required to process and implement the pension. Income continuity benefits may be paid to assist workers whose disability has plateaued and are awaiting assessment and implementation. Since 1991, when spending in this area was at \$5,996,121 expenditures rose 16 percent in 1992, then dropped 24 percent in 1993 and then rose sharply at a 61 percent rate in 1994 for a total annual expenditure of \$8,486,029.

While the above four areas have been highlighted in this discussion, it should be noted that six of the remaining expenditure types (subsistence, work assessments, tuition, travel, training-on-the-job, independent and home maintenance.) also increased during this period. However, they did not increase at the rate nor do they represent the size of expenditure of the four areas covered above. Interestingly, two of the areas, the para quad and homemaker expenditures actually decreased in 1994 over previous spending levels within the 4-year period. As indicated in Table 6.4 and in this discussion, much of the growth in expenditures appears to be related to return to work efforts. However, the costs, for the most part (at least in the highest growth areas) appear to be for wage loss payments and income continuity benefits for workers. Clearly, additional analysis of these trends is required. One of the limitations of this simple analysis is the lack of clarity regarding the types of expenditures that are lumped together within each of the codes. This is even more problematic when trying to estimate the cost-effectiveness of services and the cost/benefit ratios of successful outcomes.

New Initiatives

As part of the new Vocational Rehabilitation Services departmental and management structure, there are a number of new initiatives planned to address some of the problems and barriers described in this chapter. These deserve brief mentioning at this time. As indicated previously, the first objective of the new management group will be to re-establish supervision, guidance and oversight of the Vocational Rehabilitation Consultant group in order to establish a clearer focus, insure more uniform practices, and help clarify some of the developing policy issues in the field. These efforts are expected to include the development of more specificity in terms of standards of practice and performance indicators.

Efforts are also underway to address the informational needs of both management and consultants through the use of technologically based solutions. For example, managers will be piloting the use of an access database in the caseload review process in which they will build over time a database that will help determine how long it takes from referral to first contact, and from first contact to completion of the rehabilitation plan. These data will then be used to set standards which will be applied to performance reviews of units and individual consultants in relation to timeliness of services delivered. For consultants, there are plans underway to upgrade the software available for use in transferable skills analysis, job matching, and access to local labour market information in order to provide them with tools critically needed to perform their roles. Information that will be routinely collected and used to evaluate the services provided to injured workers is also under current development. Additional performance indicators are planned to supplement the current expenditure data and the single return to work benefit indicator.

Finally, there are plans underway to explore and test out the “case management” model of service delivery, where one individual would coordinate the entire case from the opening of the claim through the end of the process, rather than the present linear process where a case proceeds from the claims adjudicator and then, if appropriate, to the Vocational Rehabilitation Consultant. The case manager could assemble the full range of resources, including the Vocational Rehabilitation Consultant, to work on solutions at any point in the process. Various groups over the years have devoted a considerable amount of time to discussions about this innovation at the WCB.

In this operating model, the Vocational Rehabilitation Consultant would continue to provide vocational rehabilitation services but would not be responsible for ongoing adjudication and wage-loss payments associated with the case. This

model would also focus on the implementation of disability management principles and early intervention techniques in order to retain the workers attachment to the accident employer and secure more timely outcomes. Plans have been developed to more fully explore the new roles involved with the process and begin testing out these models at the research and development SDL.

Table 6.1 Vocational Rehabilitation Consultants Experience Levels

Years of Experience	Experience at WCB		Total Rehabilitation Experience	
	Number	%	Number	%
0-2	22	23%	6	6%
2-3	19	20%	3	3%
4-5	14	15%	15	16%
6-7	11	12%	10	11%
8-9	10	11%	12	13%
10-11	1	1%	10	11%
12-13	4	4%	8	8%
14+	14	15%	31	33%

Source: Tabulation by Vocational Rehabilitation Services Department

Table 6.2 Return to Work Figures, 1992-1995

Closure	1992		1993		1994		1995 *		Total	
CLS02 - Old job, same employer	956	47%	923	37%	875	35%	497	35%	3,251	39%
CLS03- New job, same employer	288	14%	375	15%	394	16%	250	18%	1,307	15%
CLS04- New job, new employer, same industry	200	10%	267	11%	268	11%	158	11%	893	11%
CLS05 - New job, new employer, new industry	326	16%	526	21%	503	20%	312	22%	1,667	20%
CLS06 - Formal training, new employer	59	3%	142	6%	172	7%	90	6%	463	5%
CLS07 - Self-employer	186	9%	278	11%	278	11%	117	8%	859	10%
Totals	2,015		2,511		2,490		1,424		8,440	

* In 1995 column only six months of data available

Source: Vocational Rehabilitation Services Department

Table 6.3 Vocational Rehabilitation RTW Rates

Year	Limited Intervention	Return to Work	No Return to Work	Total	RTW Rate
1994	3,466	2,490	2,633	8,589	0.49
1995*	1,806	1,424	1,537	4,767	0.48

* In 1995 column only six months of data available

Source: Vocational Rehabilitation Services Department

Table 6.4 Vocational Rehabilitation Expenditures, 1986-1994

Code	1986	1987	1988	1989	1990	1991	1992	1993	1994
E- Job Search	\$727,400	\$869,590	\$1,012,286	\$1,869,294	\$2,676,423	\$5,172,421	\$9,385,068	\$16,959,425	\$23,538,234
F - Subsistence	\$68,493	\$95,493	\$110,102	\$129,337	\$149,119	\$172,031	\$281,291	\$434,621	\$600,121
G - Formal Training	\$819,481	\$1,005,625	\$1,640,718	\$1,828,584	\$1,803,113	\$2,625,092	\$5,459,531	\$8,845,053	\$10,981,899
H - Work Assessment	\$818,061	\$1,043,768	\$924,459	\$398,241	\$596,591	\$923,180	\$1,068,412	\$1,477,870	\$1,572,104
J - Tuition	\$571,042	\$823,799	\$1,157,423	\$1,335,251	\$1,096,084	\$1,365,939	\$2,187,351	\$2,839,690	\$3,556,163
K - Travel	\$67,967	\$112,829	\$137,053	\$136,625	\$164,262	\$172,210	\$239,558	\$354,661	\$421,511
L - Para Quad	\$365,087	\$425,979	\$333,326	\$398,740	\$404,974	\$509,267	\$831,912	\$1,943,939	\$1,543,285
M - Miscellaneous	\$387,216	\$407,268	\$661,643	\$667,747	\$798,646	\$1,084,099	\$3,141,654	\$6,511,467	\$13,484,287
Y - TOJ			\$279,065	\$939,073	\$1,193,286	\$1,116,699	\$1,686,934	\$2,402,830	\$2,899,517
R - Income Contin.		\$1,523,310	\$3,720,896	\$3,574,397	\$2,912,762	\$5,996,121	\$6,936,556	\$5,276,965	\$8,486,029
N - Homemaker	\$72,696	\$60,976	\$84,905	\$126,373	\$170,327	\$198,261	\$248,800	\$286,442	\$221,984
P - Indep. & Home Maintenance	\$718,104	\$764,118	\$773,093	\$209,219	\$889,927	\$1,016,962	\$1,054,775	\$1,252,942	\$1,301,754
Total	\$4,615,547	\$7,132,755	\$10,834,969	\$11,612,881	\$12,855,514	\$20,352,282	\$32,521,842	\$48,555,905	\$68,606,888

Source: Vocational Rehabilitation Services Department

**Figure 6.1 –
Vocational Rehabilitation
Services**

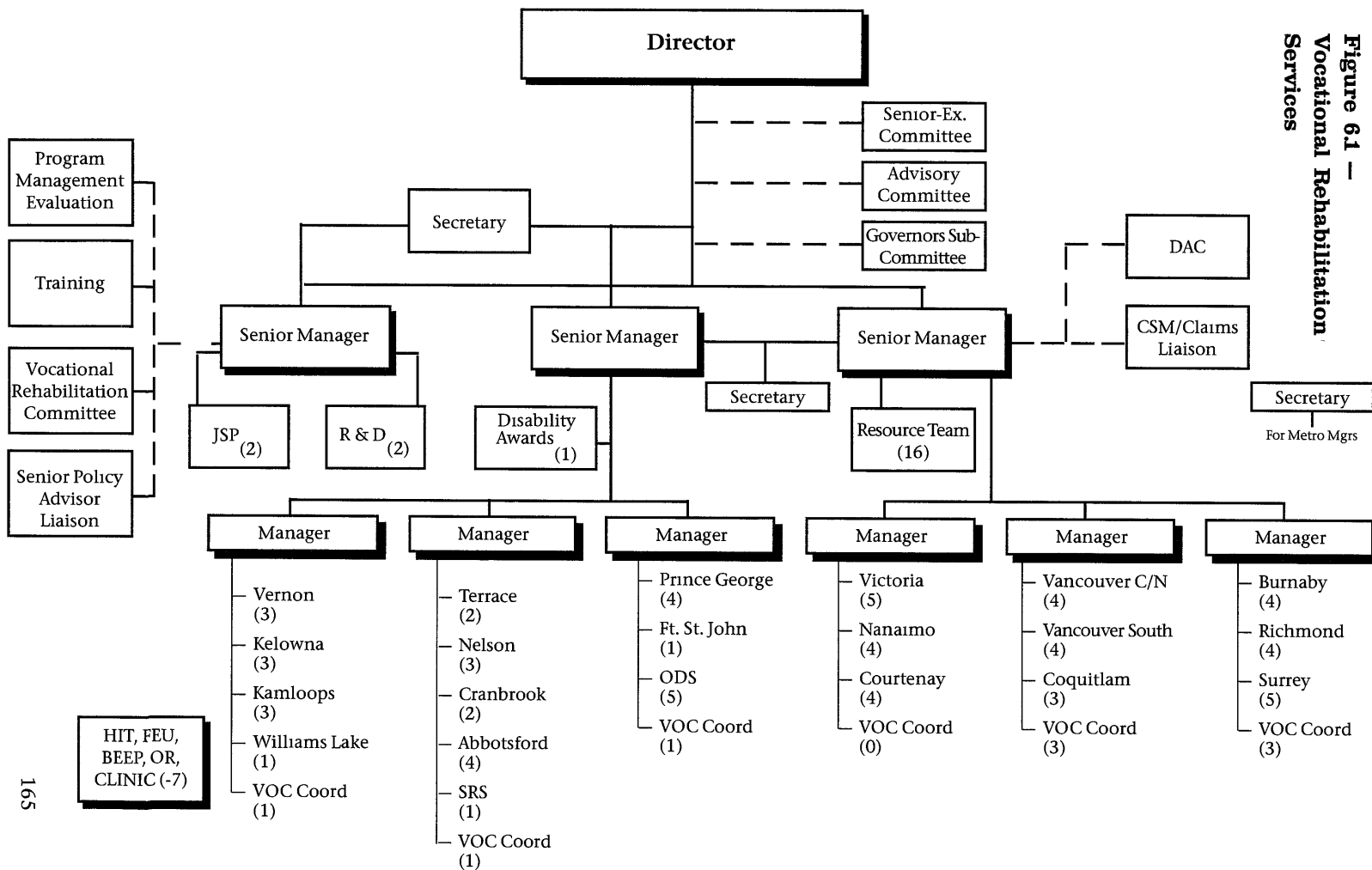


Figure 6.2 – Case Management Model

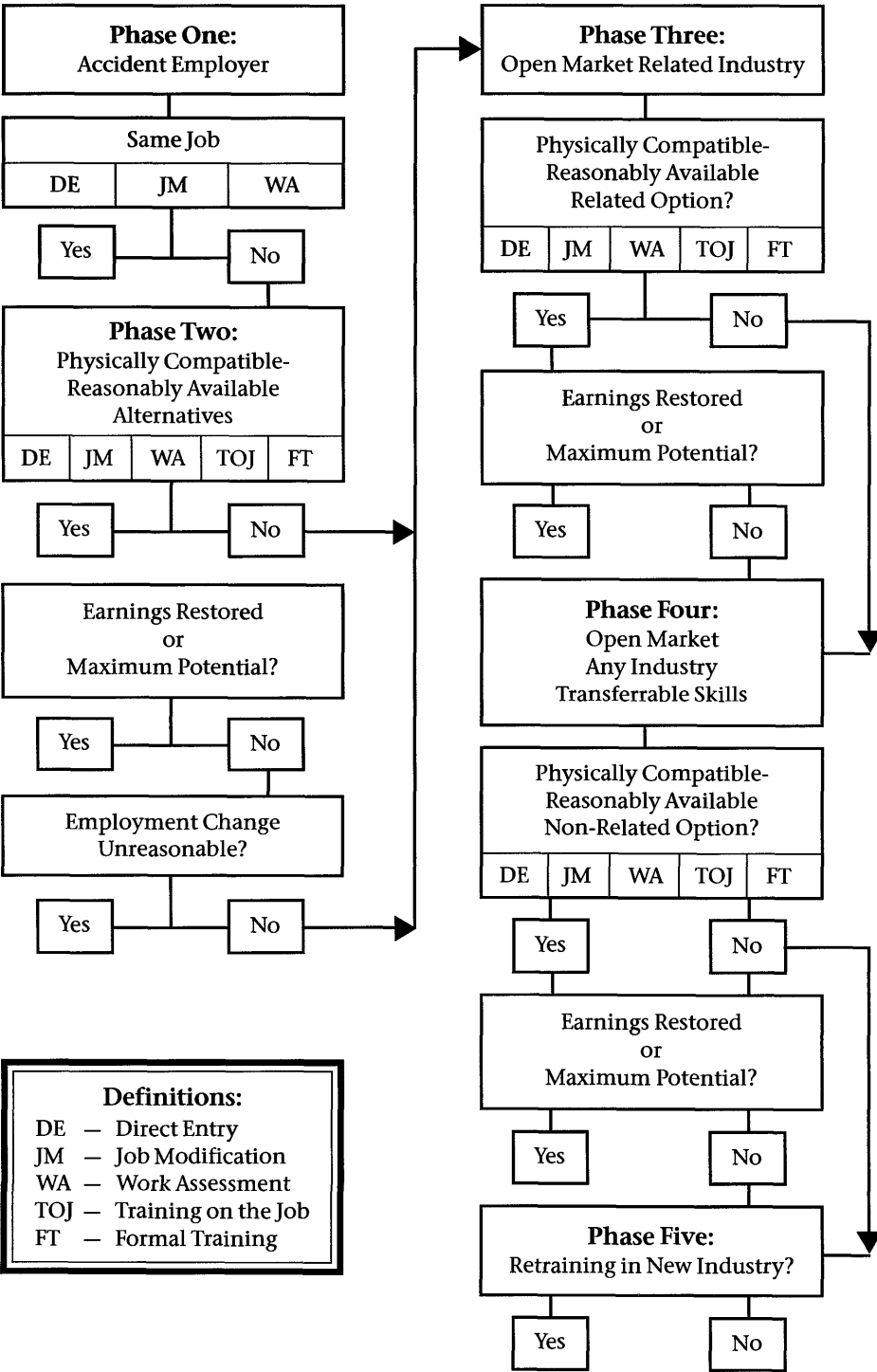
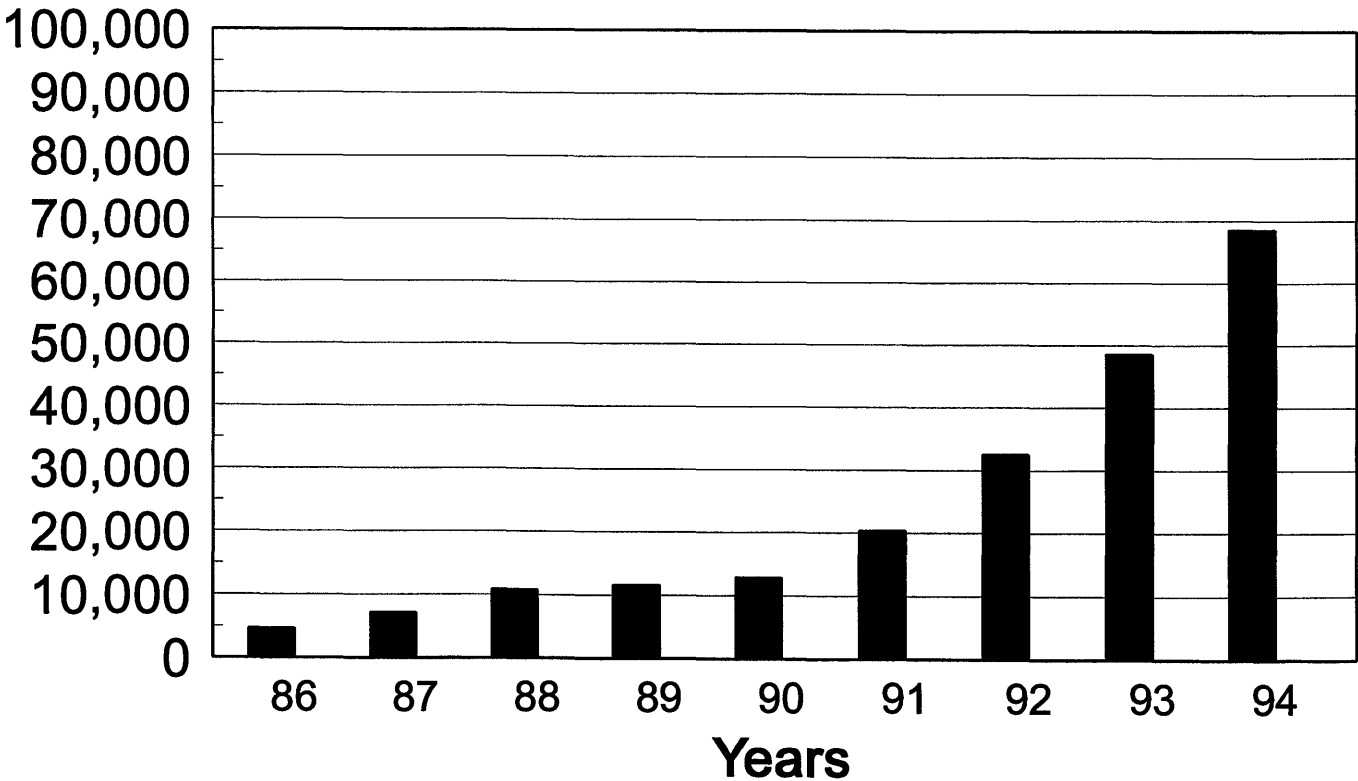


Figure 6.3 — Vocational Rehabilitation Expenditures, 1986-94

Dollars - Thousands



Source: WCB Annual Reports

Chapter 7

ASSESSMENT DEPARTMENT STRUCTURE AND PERFORMANCE

Introduction

This chapter will describe the structure and performance of the Assessment Department at the WCB. It begins with a description of the structure of the department. Then we will review specific performance issues that were raised in the course of the interviews conducted, both in 1992 and 1995.

The objective of the Assessment Department is stated in the *Assessment Policy Manual* as follows:

The primary objective of the Assessment Department is to maintain the Accident Fund at a sufficient level required to administer the provisions of the Workers' Compensation Act. This objective must be met through the orderly and equitable collection of assessments from the employers under the Act.
(Section 10:20:00)

Since the Board of Governors adopted the *Assessment Policy Manual* as WCB policy effective June 3, 1991, this can be taken to be the official objective of the Department. For the purposes of this inventory, the focus is on the "orderly and equitable collection of assessments from employers." This inventory, as well as the previous one, relies heavily on the perceptions of individuals, both inside and outside the Department, as to the extent to which the Assessment Department is meeting its (largely unstated) objectives.

Organization of the Assessment Department

The Assessment Department determines the assessments against employer payrolls, including classification, monitoring, collections, and administration of the experience rating plan. Assessment functions include:

- (1) Determine who is a worker, and who is covered under the Act from an assessment standpoint;
- (2) Register and cancel employer accounts as required;
- (3) Administer the classification system;
- (4) Administer the Experience Rated Assessment system;
- (5) Administer the Personal Optional Protection program;
- (6) Establish the assessment base;
- (7) Establish and collect assessment receivables;
- (8) Establish and maintain information on employers;
- (9) Collect OSH and other WCB receivables;
- (10) Ensure employer compliance through audits.

Overall, the Department is responsible for financing all WCB activities, as determined by the Board of Governors, and doing so in a reasonable and equitable manner. As part of its mission, it also raises the funds to support the Workers' Compensation Review Board, the Workers' Advisers Office, and the Employers' Advisers Office as determined by the Ministry of Skills, Training and Labour.

Internal WCB Linkages

As was shown in Figure 3.1, the Assessment Department reports to the Vice President for Finance/Information Services. The two departments that interface directly with Assessments on a frequent basis, Statistical Services and the Actuary, share this reporting arrangement. The Actuary prepares the annual assessment rates for each sub-class, utilizing the database developed by the Assessment Department and Statistical Services. The Compensation Services Division enters the data on individual claims as they are processed and these are allocated to employer accounts by Assessment Department personnel. In addition, the Legal Services Department represents the entire WCB, including the Assessment Department, in legal matters.

The Assessment Department also cooperates extensively with the Compensation Services Division and the Prevention Division of the WCB. The former relationship is somewhat complex, as it includes the determination of whether

a worker's employer is covered under the Act, the determination of "worker" status in difficult situations, and the establishment of principal's earnings in the case of owners and officers. The relationship with Compensation Services becomes obvious when an employer challenges the allocation of a particular claim against his/her account for experience rating purposes. The Claims Adjudicator in Compensation Services reviews the employer assignment of the claim in the first instance, but depends on the Assessment Department to determine the retroactive impact on employer assessments. The Assessment Department also collects penalties levied against employers by the Prevention Division, although they have no other formal connection.

Figure 7.1 shows the organization of the Assessment Department, effective July 1995. The Assessment Services and Employer Assessments sections are the major operating sections and contain the majority of Department employees. The Assessment Policy, Systems Development & Operations Support (SDOS), and Assessment Training sections are Department support functions. The Assessment Department had a total staff complement of 144 at the end of 1994, and a budget of approximately \$9.5 million.

Employer Assessments

The Employer Assessments section registers employers for coverage and assigns appropriate classifications to individual employer accounts. It also allocates claim costs to specific employers in complicated cases in order to generate the data for determining assessment rates for the sub-classes. Employer Assessments maintains individual employer records for over 140,000 active WCB accounts, and administers the Personal Optional Protection program for employers and owners and their families who elect this coverage under the Workers' Compensation Act. As of December 31, 1994, Employer Assessments had a staff complement of 68 employees.

As shown in Figure 7.1, the section is organized into four sub-sections, Registration, Support Services, and two "Units" each headed by a manager. The Registration sub-section sets up new accounts, determines the appropriate subclass for new registrants, and deals with the enormous volume of work generated by a dynamic population of firms. During 1994, the sub-section processed over 42,000 new registrations.¹

The two "Units" do the routine employer account maintenance for over 140,000 active employer accounts. The Units perform classification reviews,

¹ This was about double the "normal" number of new registrations, due to the impact of the universal coverage provision of Bill 63.

process penalty applications and cancellations, delete inactive accounts, and perform the on-line entry for employer accounts. Some of their work has a seasonal component because employer correspondence usually follows one of the WCB mailings. These mailings occur on a monthly, quarterly, or annual basis, depending on the particular WCB report and the size and type of employer. The Units also provide information to employers and thereby assist in informing employers about WCB policies and procedures.

Support Services performs the physical maintenance of the files for all employer accounts; including pulling and returning files for other WCB personnel, processing outgoing employer correspondence, and analysis. The analysis function includes review and coding of Employer's Report of Injury (Form 7) with proper firm numbers, location codes, sub-class and industry classification, etc. They also must interact with Compensation Services when questions arise about the employer of record at the time of an accident. This section also processes the employer "relief of cost" calculations under Section 39(1) of the Act.

Assessment Services

The Assessment Services section ensures that employers comply with payroll reporting and remittance obligations. This is accomplished primarily through audits of employers' records, frequently at the employer's place of business. They verify employers' reported payroll, and review employers' classifications to ensure equitable treatment. About 10 percent of all accounts are audited annually. The Assessment Services section also manages the delinquent assessment accounts, for employers who have fallen behind on their assessment payments, and conducts collection activities in pursuit of these delinquent amounts, including seeking legal judgments against delinquent employers. Assessment Services had a staff complement of 68 at the end of 1994.

Assessment Policy

Assessment Policy is a one-person shop that assists in research, development, implementation, and education on policies for the WCB and advises outsiders and management on WCB policy when specific issues are raised. In addition, this section handles the penalties for unregistered employers under Section 47(2) of the Act. The Manager of Assessment Policy also conducts liaison activities with organizations and individuals outside the WCB on assessment matters, including MLAs, the Ombudsman, Employers' Advisers Office, Employer Forum, etc.

Systems Development and Operations Support

The Systems Development and Operations Support (SDOS) Section provides the direct computer support for the Assessment Department. They develop, evaluate, and test changes to existing automated systems for personal computers in the Assessment Department. They also provide a technically informed interface with the Information Services Division (ISD) to guide the design, development, and implementation of new additions to the set of automated mainframe computer systems that support Assessment Department operations. In addition, they train Department staff in using the on-line systems developed by ISD. SDOS had a staff complement of three persons at December 31, 1994.

Assessment Training

The Assessment Training section is a relatively new addition to the Assessment Department (1991). Its staff of one person develops and coordinates appropriate training curricula for Department staff. This individual provides liaison with the Human Resources Department to improve the performance of centrally provided staff development activities in meeting the needs of the Assessment Department. The Manager of Assessment Training has also served many other needs of the Department, on an as needed basis. This reflects the tight staffing of the Assessment Department, with few resources available for new initiatives.

Assessment Performance

Table 7.1 shows the last 13 years of revenues raised by the Assessment Department.² The growth rate in total assessment revenue from rateable groups from 1982 through 1994 has been rather modest (5.2 percent annual increase), and even more modest in real terms (1.3 percent annually). Revenues from deposit accounts have increased by 3.0 percent annually over the period (declined by 0.9 percent annually in real terms); but have been subject to substantial fluctuation, ranging between \$18 million and \$45 million annually. OSH penalties have increased phenomenally (15.0 percent annually, 10.7 percent annually in real terms) over the period, reflecting changes in WCB policy and practice that

² We exclude 1981 because it was not included in the first Assessment Department Administrative Inventory (Hunt, 1992).

have been discussed elsewhere.³ Assessment penalties also varied widely from year to year during the period (but declined in real terms by 3.3 percent annually). From a level of over \$4.2 million in 1982, they declined to only \$1.3 million in 1987. Then, they increased rapidly, returning to the earlier level by 1991, before surpassing it in 1993 and 1994.

Table 7.2 reports the administrative costs for the Assessment Department over the past decade. The growth has been quite modest (5.4 percent per annum or about 1.5 percent in real terms) and has maintained a very consistent level of between 1.1 and 1.4 percent of total assessment revenues (with the exception of 1987 which was affected by the \$99.8 million rebate). This means that the Assessment Department raises the funds for the WCB and related organizations at a cost of \$70 to \$80 per active registered firm per year. In real terms this means that the Department's administrative costs have declined by 3.4 percent per year from 1982 to 1994 (-2.7 percent annually from 1982 to 1993). The major explanation for this performance is the level of staffing the Department.

The Assessment Department staffing was remarkably constant from 1982 through 1992. (See Table 7.3) The staffing levels rose in 1993 in anticipation of the increase in Assessment Department responsibility with the acquisition of over 13,000 new employers effective January 1, 1994. Even then, a 10 percent increase in employer population was precisely paralleled with a 10 percent increase in Department staff levels (from 130 to 143). Within the Department, there was more change apparent. Audit section shows a net loss of 10 positions and Collections a net gain of 9 positions from 1982 to 1994. Registration and Support Units showed an increase of 16 positions, appropriate to the massive effort to bring the new employers into the system and answer their questions and concerns.

The net result of a 70 percent increase in the population of active registered firms over the period and only 12 percent growth in employment has been a considerable increase in productivity per employee. This is demonstrated graphically in Figure 7.2, which shows a steady rise from about 600 active accounts per staff member in 1982 to over 900 per staff member in 1994. While this dramatic increase has been substantially offset with greater automation of Assessment Department procedures, staff definitely feel the increased workload.

³ Kathleen M. Rest and Nicholas A. Ashford, *Occupational Safety and Health in British Columbia: An Administrative Inventory*, October 1992.

Registration

The Registration Section is really the front line of the WCB in terms of its relationship with employers in the province. It is the Registration Section that a new employer first encounters when they seek information about their obligations under the Workers' Compensation Act. The employer usually calls the WCB on the phone and talks to Registration Officers about the nature of their business. It is up to the Registration Section to determine: (a) whether they are mandatory for coverage, (b) whether they might be eligible for Personal Optional Protection, or (c) whether they are not allowed to be covered under any circumstances because they are in an excluded category, such as players, performers, or similar artists.

Table 7.4 shows the number of firms registered each year and the total population of active firm accounts at the end of each year for the last 13 years. It also breaks out the number of Personal Optional Protection accounts for those years for which data are available. The number of active accounts has grown by a net 4.9 percent per year and POP accounts by 5.9 percent per year. However the new annual registrations have stayed around 20 percent of the active firm population, which implies that about 15 percent of the employer population cancels its coverage every year.⁴ So there is a great deal of activity beneath the appearance of a relatively smooth increase, even before 1994.

It is complicated to explain who *must* register and who *may* register, especially to an employer over the telephone. This is particularly problematic for those who qualify as labour contractors (no employees). These individuals do not fall neatly into either the worker or employer categories, and for a self-employed labour contractor with no employees, his/her registration is not required. If he/she wants to be covered by the WCB it would fall into the personal optional protection (POP) category. If they do not wish to establish their own account, they will then be covered for workers' compensation purposes by the firm they are contracting with.

For this reason, contractors frequently require all sub-contractors to demonstrate that they have WCB coverage. Since the WCB assigns the responsibility for benefits to the contractor (as the employer) if there is no POP, the prime contractors try to pass it along by insisting that any subcontractor they hire must be registered with the WCB, even though that may not be legally required.

Individual employers are responsible for complying with the Workers' Compensation Act and WCB Regulations, and for the payment of WCB assessments.

⁴ This represents primarily the activity of small contractors and other business sectors characterized by more casual employment patterns.

When the WCB discovers, through a reported accident or otherwise, that an employer covered under the Act is not registered, the policy is to collect one year of back assessment, plus the current year, assuming there is no evidence of deliberate avoidance of the Act. In addition, if a compensable accident was the occasion for discovering the unregistered employer, the full capitalized benefit cost of the claim can be charged directly to the employer. Further penalties are also sometimes assigned where there was a willful and knowledgeable flaunting of responsibility under the Act. (*Assessment Policy Manual*, Section 40:50:50.)

Classification Issues

The WCB of British Columbia maintains a classification system with 71 sub-classes for which separate assessment rates are determined. These sub-classes are determined by the WCB under the authority of Section 42 of the Act. In practice, the classification system is administered by the Assessment Department, with oversight by the Board of Governors. The sub-classes are shown in Table 7.5. Both the sub-classes and the rate list are adopted as policy of the WCB.

As will be shown in Chapter 8, other Canadian WCB's range from a minimum of 6 rate classes (Yukon) to 321 classes (Quebec), with most jurisdictions providing more rating groups than British Columbia. Thus, it would be fair to conclude that the basic classification schedule in British Columbia is of moderate complexity. This becomes a policy issue because the more classes that are available, the finer the distinctions among employers, but the lower the credibility of the sub-classes for actuarial purposes, other things equal.

The *Assessment Policy Manual* offers the following general guidelines for assigning classifications.

Classifications are assigned to accounts on the basis of the industry in which the employer is operating. In assigning the classification, some of the factors considered are the type of product or service that is being provided and the type of industry with which the employer is in competition. It is desirable that the assessment classification system not be an economic factor in the way business is conducted in the province. (Section 30:20:10)

However, the Manual also contains the following; "This manual does not contain the specific criteria for putting a firm in a particular classification, because of the immense number and detailed nature of these rules." (Section 30:20:10) This is an explicit recognition of the complexity of the classification decisions.

The sources of authority for the classification decisions that the Registration Section makes are: (1) The Workers' Compensation Act, as amended; (2) The *Assessment Policy Manual*; (3) the Classification Committee Minutes; and (4) the Classification and Rate List. The Classification Committee meets as required to make decisions on difficult classification matters. The Minutes of these meetings are kept as a permanent record of the decisions that are taken.

The Employer Assessments Section is responsible for making the determination of the appropriate sub-class to which an employer should be assigned. This decision is critically important because this determines the basic assessment rate. The British Columbia system operates under a "modified collective liability" system, where employers as a whole are responsible for all benefit payments and administrative costs of the workers' compensation system. But those who are members of a given sub-class bear all the claim costs, and appropriate pro-rata share of administrative and other costs, for the workers of all employers in the sub-class. In general, the WCB attempts to keep each sub-class near balance each year. Where this goal cannot be attained, a 5 — year amortization of any imbalance is factored into assessment rates for the sub-class until they are back in balance. However, the recouping of such shortfalls is also constrained by a policy of restricting annual sub-class rate swings to 20 percent.

When it is realized that the assignment of a particular employer to a given sub-class can easily mean a difference of two or three hundred percent in the annual assessment to be paid by the employer, the critical nature of this classification decision is easily seen. Furthermore, during our 1992 study, employers reported that they were not given enough information to determine on their own whether they were correctly classified. On the other hand, the difficulty of making these classification decisions, usually over the telephone, with limited information and sometimes limited cooperation, must be acknowledged. So the adequacy of the classification decisions that are made as a part of the registration process are an important subject for consideration in this administrative inventory.

WCB employees testify that it takes between 6 and 12 months to become fully competent as a Registration Officer; during that time, trainees' work is carefully reviewed by supervisory personnel. The Registration Officers interviewed grant that the complexity of the classification system is staggering, particularly to new employers. They also admit that the evidence they gather over the telephone can be somewhat haphazard due to employer confusion and the lack of training in systematic procedures for gathering this information.

The conceptual challenge of determining the correct classification for an employer on the basis of a short telephone conversation is daunting. A correct determination depends upon; (1) the complexity of the basic classification schedule, (2) the clarity of the policies interpreting it, (3) the adequacy of the training and support offered to Registration Officers and other personnel involved in the decisions, and (4) the availability of an adequate review mechanism and appeal procedure to catch the inevitable errors. In 1992, employer representatives alleged problems with all four dimensions.

The changes to the system in 1991 included making assessment matters subject to appeal to the Appeal Division. Before 1991, the only recourse for employers was appeal to the Commissioners, since the Workers' Compensation Review Board only hears appeals concerning a worker. In our 1995 interviews, we encountered considerable employer resentment about the WCB, but it centered on either the basic adjudication process (Compensation Services Division) or the appellate bodies (especially the Appeal Division), not the Assessment Department. This is a remarkable turnaround in just three short years.⁵

Unfortunately, there are no hard data available to make a credible evaluation of the adequacy of initial classification decisions. Assessment Officers consider the classification of employers as well as other issues when an employer audit is performed, and it is reportedly "not rare" to find that an incorrect sub-class has been assigned. One informed observer offered the "guesstimate" that perhaps 5 to 7 percent of classifications are incorrect. Of course, employers are more likely to complain about a mis-classification that results in a higher assessment rate. It is not possible without a detailed study to determine whether incorrect initial classification or subsequent changes in employer situations are contributing more to the error rate.

In 1992, the Administrative Inventory of Assessments reported universal agreement by employers that the Assessment Department was "too secretive." In 1995 we found this was no longer a problem, due to changes in Assessment Department policy and procedure, influenced in part by Freedom of Information and Protection of Privacy Act requirements. The Assessment Department now makes the WCB classification for all employers available as a matter of public record. This seems to have satisfied the need for more information.

The Assessment Department also maintains a major commitment to easy employer access by making registration available over the telephone. Undoubtedly, this makes life much easier for start-up businesses, small sub-contractors, and

⁵ To be fair, we did not interview any of the employer groups who had newly been brought under the Act.

others. It also makes it feasible for the WCB to deal with the volume of turnover (around 15 to 20 percent annually according to WCB statistics) among the employer population in the province.

Assessment Audits

Employers in British Columbia report their payrolls, and calculate and send in their WCB assessments on either a quarterly or annual basis. Those firms whose total assessment is expected to be under \$500 file annually; those with larger assessments file quarterly.⁶ While the WCB Assessment system is therefore a self-reporting system, there is a demonstrated need for an audit function to ensure that all employers are meeting their reporting requirements and payment obligations in an accurate and timely manner. The audits are the “enforcement” side of the Assessment Department, but they also serve a vitally important equity function by assuring employers that everyone is carrying their fair share of the load.

The audits are performed by Assessment Officers, who are the WCB field representatives for assessment matters. They audit a variety of financial, payroll, and other records of registered firms to determine the accuracy of the reported assessable earnings. They also review the industry classification of the audit target firm, and perform other related assessment functions. In addition, they perform an extremely important educational function, especially because they spend time on the employers’ premises. Thus, the Assessment Officers provide an actual person for employers to relate to, in contrast to the large, impersonal bureaucracy of the WCB. The audits are conducted either on the employer’s premises, at the WCB offices (“bring-in audit”), or at a neutral rented site (especially when conducted in a relatively remote part of the province). Depending on the outcome of the audit, the officers adjust assessments as necessary and communicate this information to the employer involved.

At the end of 1994, there were 38 Assessment Officers employed in the Assessment Department. In addition, there is one Office Assessor, who administers the out-of-province accounts and performs other varied assessment duties, three Audit Clerks and one Audit File Clerk to provide clerical support, and two Audit Managers. As shown in Table 7.6, the number of audits has declined by nearly 4 percent per year over the last decade, from over 17,000 to under 11,000 annually. According to WCB staff, this represents the results of the aggressive staffing level controls practised in the Department. However, both the gross revenue

⁶ Some smaller firms also file quarterly. These are in industries characterized by wide swings in assessments, such as logging, construction, etc.

and net revenue change resulting from audits has increased substantially. This reflects department policy to target audits more closely on those accounts where there is believed to be substantial recovery potential. The result is that the likelihood of audit has declined significantly over the decade, probably significantly more for small firms than for large ones.

Table 7.6 shows that audits as a percent of registered firms has declined from 22.5 percent in 1982 to only 8.0 percent in 1994. Further, there is a trend toward a higher “success” rate (percent of audits resulting in changes) as the targeting of audits has increased. This is what one would expect if the number of audits was declining, but they were successfully targeted on likely candidates. Moreover, the fact that net revenues from audits have increased by 7.6 percent per year over the period 1982 through 1994, while the number of audits have declined by 3.9 percent per year, clearly demonstrates that auditing the targeted accounts results in greater revenue per audit. What it cannot show is the revenues that may have been lost as a consequence of a smaller likelihood of audit.

Dividing the net revenues generated by audits (from Table 7.6) by the number of Assessment Officers (38) indicates that the average Assessment Officer generates between \$90 and \$100 thousand in net revenue per year. However, the important information and public education functions of the Assessment Officers should also not be overlooked. High visibility of Assessment Officers clearly seems in both the financial and public relations interest of the WCB.

Assessment Collections

The Collections Section is responsible for collecting delinquent employer accounts, i.e. those who have fallen into default on their WCB assessment payments. In addition, this Section performs the “clearance” function where employers, for purposes of contract or sub-contract, need to certify that they have WCB coverage paid up and current. The Collections Section had a staff complement of 24 persons at the end of 1994. There are 17 Collection Officers with 4 clerical support personnel (2 Collections Clerks, 1 Clearance Clerk, and 1 Legal and Insolvency Clerk) and 2 Collections Managers. The primary interface with delinquent employers and their representatives is handled by the Collection Officers.

Table 7.7 shows the performance statistics that are available for the Collections Section. The volume of overdue accounts generally followed a downward trend from 1984 until 1988, and then turned up again. The result has been a very slow expansion of the number of overdue accounts (1.1 percent per year) and the amount of money outstanding (by 1.3 percent per year in constant dol-

lars). WCB staff report that the number reported for overdue assessments substantially underestimates the true recovery potential, because the computer system only counts the penalty amounts and not the underlying delinquency that the penalty is based upon. Overdue assessments as a percent of total assessment revenue from rateable groups (the Collections Section does not deal with Deposit Accounts), have ranged from 3 percent to 6 percent over this period. The volume of overdue accounts largely reflects the underlying economic environment, with some overlay due to WCB audit and penalty policy.

Collection recoveries have ranged from \$9.3 million to \$17.8 million annually over the period, varying from 50 to 75 percent of the overdue balances at the end of the previous year. Overall, recoveries have grown slightly faster than the rate of inflation, increasing 1.6 percent per year in real terms. An additional sum of from \$3.3 million to \$9.3 million has been written off as uncollectible in each year, amounting to between 19 and 32 percent of the previous year-end overdue balance. In summary, about 10 percent of employer accounts involving 4 percent of WCB assessments are delinquent at the end of each year. About 60 percent of this money will be recovered, and 25 to 30 percent written off during the next 12 months.

Client Satisfaction

The Assessment Department has made a lot of progress with its external image in the three years since the last Administrative Inventory. Nothing demonstrates that more effectively than the fact of, and the results from, a customer satisfaction survey conducted by Coopers & Lybrand for the WCB in the first half of 1995. A stratified sample of 2,500 firms was drawn, as well as a simple random sample of an additional 2,000 firms⁷. All surveyed firms were required to have been registered before January 1, 1995 and must have had some contact with the Assessment Department in the past 18 months. The sample was stratified by merit/demerit status, payroll (3 levels — \$1 to 2.5 million, \$2.5 to 25 million, and over \$25 million), location (5 sites — Victoria, Prince George, Terrace, Kelowna, and Vernon), and sub-class (9 sub-classes were included — logging, mining, retail stores, hotels, farming, construction, oil and gas, taxicabs, and delivery services). In addition a strata for newly covered (Bill 63) employers was included. A credible survey response rate of 37 percent was secured with an initial mailing and one follow-up mailing.

⁷ Coopers & Lybrand Consulting briefing for New Directions Team, June 7, 1995.

The overall performance of the Assessment Department was rated as “excellent” by 6 percent of employers, “very good” by 51 percent of employers, and “average” by 40 percent of employers. Only 3 percent rated the Assessment Department as “below average” or “poor.” Top areas of performance were: helpful, courteous staff, excellent information provided, and fast response on registrations. Suggested areas for improvement were: accessibility by phone, single contact person, changes to the timing of remittances, and even better information and more responsiveness. Nearly 84 percent of sampled employers agreed that their “statement of account information is easy to understand” and 83 percent agreed that “the statements are accurate.” In response to the statement “I believe that my firm has the proper experience rating and firm classification,” 69 percent agreed, 17 percent did not know, and 14 percent disagreed.

Naturally, demerit employers had lower opinions of WCB performance than merit employers, but it is remarkable that nearly 58 percent of British Columbia employers agreed with the statement, “My annual assessment is an appropriate reflection of my firm’s claims experience and that of my industry.” Only 19 percent disagreed with that statement and 23 percent did not know. This is a very good level of employer acceptance, upon which the Assessment Department intends to build better service through a project that will be described later.

Disputes and Appeals

The Workers’ Compensation Act as amended by Bill 27 allows for employer appeals on assessment, penalty, and classification matters “on the grounds of error of law or fact or contravention of a published policy of the governors” (Section 96). Table 7.8 shows the number of applications to the Appeal Division filed by employers since 1992.⁸ The number of assessment appeals has grown, but appeals from about 100 out of 140,000 active accounts is not a very large number. In fact, these appeals are fewer than the number of employer appeals that seek relief of costs from particular accidents for various reasons (up to 400 per year under Sections 39(1), 47(2) and 10(8)). Prevention appeals have shown no particular trend over the last three years. Overall, employer petitions have accounted for between one-fourth and one-third of the Appeal Division caseload. See Chapter 4 for a full description of appeal procedures and activity.

Table 7.9 presents limited time series data that show the trend in appeal activity since before the replacement of the Commissioners with the Board of

⁸ Appeal Division came into legal existence on June 3, 1991.

Governors and Appeal Division. Assessment appeals have taken a sizable jump under the new structure, which reflects the opening of the appeal avenue described earlier. As employers were granted a more effective avenue of appeal than was previously offered, they took it. This also occurred against a backdrop of considerable suspicion by employers over assessment matters (Hunt, 1992). However, the changes at the Assessment Department and access to the Appeal Division appear to have largely resolved employer concerns about procedure. Appeals from WCB actions under Section 47(2), which involves unregistered employers, have declined somewhat.

However, the dramatic change evident in Table 7.9 is in appeals under Section 39(1), employer relief of costs, where appeal activity grew phenomenally in 1991 and then receded in the past few years. The grounds for these appeals is that the employer does not agree that the claim is properly charged against his/her account, and seeks to have it charged to the second injury fund. Such a change would affect the employers assessment rate through the experience rating (ERA) merit or demerit applied to his/her individual account.⁹ While it appears that the explosion in these appeals occurred with the birth of the Appeal Division, that is probably a coincidence since the flood of relief-of-cost appeals began early in 1991 before the Appeal Division came into existence.

Table 7.10 shows the Appeal Division outcomes on the two main categories of employer appeals for 1992 through 1994. The percentage of successful results on these appeals has ranged from 18 to 24 percent over the first three years of experience. Employer representatives interviewed for this study did not express any particular dissatisfaction with Appeal Division decisions on employer matters, but did express strong differences of opinion with Appeal Division decisions in general. This issue will be addressed in Chapter 9.

Experience Rating (ERA) Program

British Columbia, like other Canadian jurisdictions, endorses the principle of collective liability among employers for workers' compensation benefits. This means that British Columbia *employers as a whole* have the responsibility of paying for workers' compensation benefits to injured workers, rather than the individual employer holding this responsibility. This is generally identified as the German philosophy of social insurance, as opposed to the British philosophy of individual employer liability, as followed in U.S. jurisdictions.

⁹ These appeals are being driven in part by the activity of private consultants who endeavor to assist employers in challenging inappropriate charges to their account. See the more complete discussion of this issue later in the chapter.

However, there have been major exceptions, right from the beginning. The original Workmen's Compensation Act of 1917 provided for 12 separate classes of employers, not one rate for all employers as the pure collective liability principle would suggest. Thus, back in 1917, there was a basic policy choice made that the collective liability principle was not absolute. In particular, there should be consideration of another fundamental principle, that the employer's cost of workers' compensation should be proportional to the hazard rate. This provides, at least theoretically, that the price of the goods and services produced should include the cost of maintaining and rehabilitating workers injured in producing those goods and services. In turn, such a provision should create an incentive for employers to prevent injuries and illnesses, thereby avoiding their cost.

Section 42 of the Workers' Compensation Act provides that:

The board shall establish subclassifications, differentials and proportions in the rates as between the different kinds of employment in the same class as may be considered just; and where the board thinks a particular industry or plant is shown to be so circumstanced or conducted that the hazard or cost of compensation differs from the average of the class or subclass to which the industry or plant is assigned, the board shall confer or impose on that industry or plant a special rate, differential or assessment to correspond with the relative hazard or cost of compensation of that industry or plant, and for that purpose may also adopt a system of experience rating.

In 1986, after considerable public and private debate, the WCB introduced the Experience Rated Assessment (ERA) program for general industry classes.¹⁰ Employer interests had long favoured such a move to experience rating on the basis of equity between employers with different accident and claims experience. They argued that it was counter-productive to force an employer with a good safety and claims record to pay the same WCB assessment rate as an employer with a bad record.

The ERA plan in British Columbia is moderate in its provisions; it seeks to encourage individual employers to create safer workplaces, but without unduly compromising the fundamental principle of collective liability.¹¹ The maximum merit and demerit is 33 percent; that is, the best (worst) employers receive merits (demerits) of 33 percent, and hence are assessed one-third less (more) than

¹⁰ There had been programs for select industries for several years.

¹¹ A comparative analysis with other Canadian WCBs is provided in Chapter 8.

the average rate for their sub-class. This means that the worst performing employers in a sub-class pay exactly twice the assessment rate paid by the best employers in that sub-class.

ERA merits or demerits apply prospectively, as a reward or penalty for performance in the past, rather than retrospectively, as an attempt to balance the individual employer's claims costs with his/her assessments after the fact. Further, the WCB uses two years of claims data to determine the ERA merit/demerit, as a compromise between the competing goals of quick feedback and actuarial credibility. As a matter of policy, the ERA plan also is designed to be balanced, that is, each sub-class should be balanced between costs and revenues on an annual basis, after positive and negative deviations are summed. For every dollar of payroll that gets a merit rating, an equal volume of payroll must receive a demerit rating. This prevents the plan from becoming simply a discount system for large employers. This is not always achieved, however. There has been a shortfall of 3 to 4 percent annually in recent years.

Smaller firms also participate in the ERA program. Actuarial credibility argues against the participation of small firms, since their short-term accident and claims record reflects a greater influence of random factors. But equity suggests that they too should have the opportunity to reduce their workers' compensation costs through effective injury prevention programs. The WCB allows smaller employers to participate in ERA, but at a reduced degree of participation. Those employers with aggregate assessable payrolls of less than twice the maximum wage rate for each of the past two years (about \$105,000 currently) participate in ERA, but only at the 50 percent level. This means that their maximum merit/demerit is one-sixth of the average assessment rate.¹² New or start-up firms have no basis for merit/demerit rating, and hence are not rated until they have compiled a record. Effectively this means that new firms pay the average sub-class rate for the first two years of their existence, at which point they become eligible for ERA adjustments.

Since there must be a specific point in time at which the ERA merit/demerit factor is calculated, the WCB uses June 30 as the cutoff point for claims cost accumulation when calculating the relative claims costs for ERA purposes. This means that long duration claims do not count against an employer's ERA merit/demerit beyond the two and one-half year maximum period. It also means that if inefficient claims adjudication at the WCB, slow medical recovery by the injured worker, or appeals by the employer or worker delay the award of a permanent disability pension beyond the two and one-half year period from

¹² Farm industry classifications have an additional step. The smallest firms only participate in ERA at the 25 percent level.

date of injury, this amount will not be counted against the employer's experience rating evaluation. In addition, occupational diseases with average latencies of two years or more are excluded from the calculations on the theory that it is inappropriate to punish employers for the mistakes of the past. The aggregate impact of these exclusions is estimated by the Assessment Department to result in only about one-third of all claim costs entering the ERA database.

Relief of Cost Applications

Because of ERA merits and demerits, employers have a direct financial interest in the claims that are charged against their account. If they can avoid responsibility for a particular claim, their ERA merit/demerit will be similarly affected. Under Sections 39(1)(d) and (e) of the Act, employers are entitled to "relief of cost" for assessment purposes when claims are paid that involve pre-existing conditions, or that result from disasters. Over the last five years, an aggressive consultation industry has grown up to help employers find examples of, and file applications for, relief of these costs, thereby lowering their assessment bills retrospectively. The consultants generally receive a contingent fee of up to one-third of the firm's recovery.

There are a number of unfortunate aspects to this situation. First, it feeds the fears of labour that ERA's major impact is to encourage "claims avoidance" behaviour rather than accident prevention behaviour. Second, there is no question that these allocations affect individual employer costs, but it is difficult to see what difference it makes to the general welfare whether a given claim is charged to an individual employer or to the sub-class as a whole. In fact, it could be argued that these after-the-fact adjustments could endanger the adequacy of claim reserves, especially since they are not offset by other employers being assigned responsibility for cases that were not charged to their account.

In addition, the burden of processing these requests falls on an already thinly stretched WCB staff. This relief of cost work is significant in both Compensation Services and the Assessment Department. In the first half of 1992, nearly 750 such applications were received, and one WCB source estimated that one consulting firm alone was occupying at least one full-time staff member in the Assessment Department just dealing with their relief-of-cost applications. Further, managers were concerned that these reviews could not be done with appropriate assurance of correctness due to the poor quality of information available in the claim file and the lack of computerized procedures to handle the recalculations.

The fact that the private consultants involved are mostly previous WCB employees (who may be the only ones who understand the Act well enough to engage in this business), also means that current WCB employees resent these requests. By examining every case, the consultants are bound to find some errors, given the volume and pace of adjudication at the WCB. So current WCB staff feel that they are forced to do this additional difficult and tedious work to correct an honest error made by overworked WCB personnel so that some former WCB employees can make a handsome living.

In 1994, a moratorium was imposed on processing relief-of-cost petitions because of the adjudication emergency declared by the Compensation Services Division. After the initial burst of enthusiasm, the number of employer requests seems to have dropped off more recently, and there may now be an uneasy equilibrium at current levels of activity. However, this example illustrates labour's concerns about experience rating in general and ERA in particular. The fundamental issue is whether making individual employers directly responsible for some (or all) of the cost of their employees' disability benefits leads those employers to engage in greater injury prevention efforts than otherwise.¹³

Labour spokespersons fervently believe that it *does not*; that it leads instead to "claims avoidance" behaviours that are not socially productive, but confer private financial advantage on the firm.¹⁴ Business spokespersons believe that such direct responsibility *does* lead to increased attention to accident and disease prevention, thereby reducing the aggregate private (and social) cost of disability.¹⁵ In addition, employer representatives perceive a vitally important equity dimension to experience rating. A system that tailors system costs more closely to an individual employer's experience is seen as a "fairer" system by employers. The WCB is conducting a study of the ERA system that is scheduled to be completed in early 1996. Presumably the study will help resolve this perennial issue and provide a new source of policy initiatives for debate in British Columbia.

¹³ See Cathy Walker and James G. Matkin, "Experience-Rating—An Exchange" *At the Centre* (Toronto: Canadian Centre for Occupational Health and Safety) October 1985.

¹⁴ For example, see Terence G. Ison, "The Canadian Experience," paper presented at the Conference of the Institute for Human Safety and Account Research, Wellington, New Zealand, October 1991.

¹⁵ See, for example, James Chelius, "Workers' Compensation and Injury Prevention," *Employment Relations Today* (New York, Executive Enterprises Publications) Summer 1988.

New Directions Project

There is another recent development in the Assessment Department that is deserving of attention. In March of 1994, the Department initiated a review of its business focus, organizational structure, and work processes. This “New Directions” project was launched under the sponsorship of the Vice President for Finance/Information Services and the Director of the Assessment Department. Working with an internal systems consultant from the Information Services Division, a team of 15 Assessment Department employees began to review the business of the Assessment Department in April. They met extensively (24 one-half day sessions) and generated a Consensus Report by the end of June.

This process began to generate a new spirit of cooperation and a sense of teamwork among the New Directions Project Team that was a major contrast from the past.¹⁶ The team members each had one vote and were selected to represent Department management as well as bargaining unit members, and one member specifically represented the CEU Executive. Minutes of the team were made available to other Department staff and weekly progress reports were distributed via e-mail and newsletter. The New Directions Project Team developed a list of “Issues/Problems/Barriers.” They ranged from major issues (such as work volumes and lack of staff training and development) to narrower ones (like the lack of a trained “skip-tracer” for undelivered mail). However, the overall thrust of the list indicated that there was much potential to eliminate needless work, upgrade staff skills, and improve the functioning of the Department. The Departmental and Divisional management received this report and determined that the Team was heading in the right direction.

Phase II of New Directions was launched in the Fall of 1994 with the selection of Coopers & Lybrand Consulting to assist the team with a full Business Process Reengineering (BPR) exercise. Detailed process reviews were conducted for Registrations, Account Maintenance, Payments, and Penalties and Audit.¹⁷ The team mapped the current process, collected information representing current practice, identified issues relating to processing models, developed a redesigned

¹⁶ See Hunt (1992) for a description of the previous atmosphere within the Assessments Department.

¹⁷ Collections was not completed before the process was temporarily suspended by the CEU due to lack of progress in reaching a new contract settlement with the WCB in the Spring of 1995.

business process, and estimated the benefits achievable through revised business processing. The results of this effort were being released in the summer of 1995. According to the "Phase Two — Team Findings," there are significant opportunities to:

- (1) Improve the level of customer service,
- (2) Increase the efficiency of the internal processes,
- (3) Reduce the costs associated with providing product and service while maintaining value, and
- (4) Improve the timeliness associated with each process.

While it is too early to conclude that the project will be a success, it is hard to overlook the enthusiasm of New Directions team members. The key to success is probably the attitudes of Departmental management in embracing these changes and promoting greater efficiency and increased employee participation. even at the expense of traditional positions of authority and command.

Further, the CEU potential to block implementation of the New Directions innovations seemed to be defused with the settlement of the collective bargaining contract in July. That contract includes a guarantee of maintenance of employment for all current WCB employees for the life of the 3 — year contract. This added degree of job security will enable the WCB to implement process improvements without primary attention diverted to the job security concerns of current employees. The promise of New Directions is clear, we all await the tangible performance improvements that are possible.

Table 7.1 Assessment Department Revenue Performance

	1982	1983	1984	1985	1986	1987 ¹	1988 ²	1989	1990	1991	1992	1993	1994	Annual Growth Rate	CPI Adjusted Growth Rate
Total Assessment Revenue from Rateable Groups (\$000) ³	\$449,395	\$423,799	\$446,381	\$456,120	\$399,749	\$296,367	\$402,133	\$495,743	\$514,660	\$531,495	\$597,596	\$690,581	\$829,369	5.2%	1.3%
Total Revenue from Deposit Accounts (\$000)	\$29,955	\$30,942	\$29,747	\$18,639	\$18,486	\$24,532	\$36,776	\$21,288	\$28,953	\$37,647	\$42,369	\$44,655	\$42,686	3.0%	-0.9%
Penalties - OSH (\$000)	\$308	\$166	\$121	\$500 est	\$893	\$1,164	\$968	\$1,857	\$3,697	\$2,149	\$1,200	\$1,494	\$1,648	15.0%	10.7%
Penalties - Assessments (\$000)	\$4,210	\$2,932	\$3,804	\$2,960 est	\$2,211	\$1,301	\$2,074	\$1,849	\$3,718	\$4,281	\$3,822	\$4,834	\$4,484	0.5%	-3.3%
Silicosis Fund Refund ⁴	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	\$12,503	N/A		
Total Revenue (\$000)	\$483,868	\$457,839	\$480,053	\$478,219	\$421,339	\$323,364	\$441,951	\$520,737	\$551,028	\$575,572	\$664,987	\$729,061	\$878,187	5.1%	1.1%

¹ Includes a rebate of \$99.8 million² Includes a rebate of \$14.8 million³ Data for each year includes year-end accruals and prior year adjustments⁴ The Silicosis Fund was discontinued as of December 31, 1992. The excess monies in this class totalling \$12,503,000 were refunded to employers during 1993. All industrial diseases and all future liabilities previously recognized within the Silicosis Fund were transferred to existing classes of the Accident Fund.

Source: Workers' Compensation Board, Assessment Department, Internal Reports

Table 7.2 Assessment Department Administrative Cost

	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	Annual Growth Rate	CPI Adjusted Growth Rate
Assessment Department Total Administrative Cost (\$000)	\$5,096	\$5,270	\$5,448	\$5,393	\$5,561	\$5,772	\$5,964	\$5,875	\$6,785	\$7,360	\$8,838	\$8,731	\$9,534	5.4%	1.4%
Percent of Assessment Revenue	1.1%	1.2%	1.1%	1.1%	1.3%	1.8%*	1.3%	1.1%	1.2%	1.3%	1.4%	1.2%	1.1%	N/A	
Cost per Active Firm	\$66	\$64	\$64	\$62	\$62	\$61	\$61	\$57	\$64	\$67	\$79	\$77	\$69	0.4%	-3.4%

* Affected by rebate of \$99.8 million

Source: Workers' Compensation Board, Assessment Department, Internal Reports

Table 7.3 Assessment Department Staff Levels, as of December 31

Assessment Staff by Function	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993*	1994*	Annual Growth Rate
Registration and														
Support Units	52	52	53	53	54	54	54	53	53	53	55	68	68	2.3%
Audits	53	48	45	47	47	45	45	45	46	47	47	43	43	-1.7%
Collections	18	17	17	22	22	21	21	20	20	21	20	24	27	3.4%
Administration	7	7	7	7	7	7	7	7	7	8	8	8	8	1.1%
Total	130	124	122	129	130	127	127	125	126	129	130	143	146	1.0%

* Increase in staff due to preparation for the implementation of Bill 63 effective January 1, 1994

Source: Workers' Compensation Board, Assessment Department, Internal Reports

Table 7.4 Registration Performance Statistics

	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994*	Annual Growth Rate
Total Firms														
Registered	13,959	21,583	18,408	18,302	19,054	19,891	21,242	23,039	21,953	22,954	22,699	21,999	42,080	—
Number of Active Firms														
at December 31	77,534	82,723	85,155	86,940	89,808	94,074	98,523	103,515	106,088	109,106	112,525	113,929	138,249	4.9%
Number of Active POP Accounts at														
December 31	N/A	N/A	N/A	N/A	N/A	N/A	N/A	15,051	15,344	16,123	18,471	19,257	20,048	5.9%

* Implementation of Bill 63 effective January 1, 1994

Source: Workers' Compensation Board, Assessment Department, Internal Reports

Table 7.5 Classes of Industry

All industries within the scope of the *Workers' Compensation Act* are divided into the following general classes:

CLASS NO. 1

Sub Class

- 02 Logging
- 04 Pulp and paper mills
- 05 Sawmills
- 07 Manufacturing plywood
- 09 Shake and shingle mills

CLASS NO. 4

Sub Class

- 03 Quarrying, manufacturing cement
- 11 Metal & asbestos mining
- 18 Aluminum smelter
- 30 Coal mining

CLASS NO. 6

Sub Class

- 02 Miscellaneous manufacturing & services
- 03 Miscellaneous manufacturing & services (mixed)
- 04 Manufacturing furniture, RVs
- 05 Operating rink, arcade, track
- 08 Manufacturing beer, wine, soft drinks
- 17 Manufacturing cloth, rope, canvas
- 18 Manufacturing clothing, hats, miscellaneous
- 20 Bakeries, manufacturing sugar, pasta
- 22 Operating buildings, malls, cemeteries
- 24 Canning fruit & vegetables, dairies
- 25 Laundries, carpet cleaners
- 26 Hospitals, rest homes
- 27 Hotels, pubs, clubs, spas
- 31 Land survey, timber cruising
- 32 Manufacturing flour, rice, animal feed
- 36 Oil & gas pipelines & depots
- 37 Meat packing, manufacturing sausage
- 39 Printing & display painting
- 43 Farming & ranching
- 46 Film houses & other theatres
- 54 Wholesalers & supply houses
- 56 Trade union, employer association
- 57 Building supply, redi-mix concrete
- 58 Domestic, homemaker services
- 59 Service stations
- 70 Churches
- 71 Supermarkets/butcher shops
- 72 Department stores
- 73 General retail

CLASS NO. 7

Sub Class

- 05 Drywall, insulation
- 06 Building construction
- 07 Foundries, fabricators
- 11 Electrical wiring buildings
- 13 Janitor services
- 21 Marine vessel repair
- 25 Construction bridges, dams
- 26 Construction roads, sewers
- 47 Consulting engineers, architects
- 48 Oil/gas drilling

CLASS NO. 8

Sub Class

- 01 Power/Natural gas utility
- 08 Telephone & broadcasting
- 11 Operating bus lines & depots
- 12 Taxi
- 20 Scheduled airlines
- 23 Charter air/helicopter
- 51 Trucking, guiding

CLASS NO. 9

Sub Class

- 01 Water transportation
- 02 Stevedoring
- 06 Fish canning & hatchery
- 09 Shipping services
- 11 Fishing

CLASS NO. 14

Sub Class

- 01 Municipal bodies, Indian bands
- 06 Schools/social services

CLASS NO. 31

Sub Class

- 01 Doctors, etc.

CLASS NO. 33

Sub Class

- 01 Accountants/lawyers
- 02 Ad agencies, bailiffs, employment agencies
- 03 Business consultants, data processing
- 04 Banks, insurance, real estate
- 05 Nannies, babysitters

CLASS NO. 38

Sub Class

- 00 Federal job creation - U.I.
- 01 Federal job creation grants
- 02 Federal job creation grants

Source: Workers' Compensation Board

Table 7.6 Audit Performance Statistics

	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	CPI Annual Adjusted Growth Rate	Growth Rate
Firms Audited	17,451	17,572	16,090	15,416	14,277	14,274	16,733	13,468	14,491	11,623	11,897	10,057	10,865	-3.9%	—
Percent Audits Resulting in Changes	N/A	51.5%	N/A	N/A	N/A	43.5%	37.4%	42.1%	38.7%	48.7%	49.0%	51.0%	52.0%	—	—
Gross Revenue Increase from Audits (\$000)	\$2,387	\$2,984	\$3,294	\$3,034	\$3,453	\$3,619	\$4,400	\$3,871	\$4,783	\$6,277	\$5,708	\$4,320	\$6,509	8.7%	4.6%
Net Revenue Increase from Audits (\$000)	\$1,423	\$2,035	\$2,375	\$2,118	\$2,423	\$2,413	\$2,778	\$2,890	\$3,580	\$3,730	\$2,591	\$2,732	\$3,441	7.6%	3.6%
Audits as percent of Active Firms	22.5%	21.2%	18.9%	17.7%	15.9%	15.2%	17.0%	13.0%	13.7%	10.7%	11.0%	9.0%	8.0%	-8.3%	—

Source: Workers’ Compensation Board, Assessment Department, Internal Reports

Table 7.7 Collection Performance Statistics

	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	Annual Growth Rate	CPI Adjusted Growth Rate
Overdue Accounts at December 31	13,501	12,743	13,806	11,777	10,004	8,116	7,563	9,183	10,923	11,853	12,385	13,141	15,474	1.1%	—
Total \$ Overdue Assessments at December 31 (\$000)	\$17,056	\$22,356	\$28,119	\$28,747	\$24,514	\$18,345	\$15,815	\$16,156	\$19,646	\$23,704	\$26,925	\$30,432	\$31,655	5.3%	1.3%
Total \$ Written Off for Year Ended December 31 (\$000)*	\$3,950	\$5,500	\$5,902	\$6,933	\$7,810	\$5,993	\$4,767	\$4,376	\$3,289	\$4,606	\$4,462	\$4,914	\$9,302	7.4%	3.3%
Total \$ Collected (Recovered) (\$000)	\$9,270	\$10,948	\$12,209	\$14,130	\$14,719	\$15,371	\$11,175	\$9,943	\$12,023	\$14,153	\$13,913	\$14,841	\$17,840	5.6%	1.6%
Total Clearance Requests for Year	N/A	N/A	N/A	N/A	24,809	31,145	37,165	32,099	28,573	35,433	38,864	40,041	45,315	7.8%	—
Overdue Accounts as Percent of Active Firms	17.4%	15.4%	16.2%	13.5%	11.1%	8.6%	7.7%	8.9%	10.3%	10.9%	11.0%	11.5%	11.2%	-3.6%	—
Overdue Assessments as Percent of Total Assessment Revenue from Rateable Groups	3.8%	5.3%	6.3%	6.3%	6.1%	6.2%	3.9%	3.3%	3.8%	4.5%	4.2%	4.2%	3.6%	—	—
Collections as Percent of Overdue Accounts at End of Previous Year	—	64.2%	54.6%	50.3%	51.2%	62.7%	60.9%	62.9%	74.4%	72.0%	58.7%	55.1%	58.6%	—	—
Write-Offs as Percent of Overdue Accounts at End of Previous Year	—	32.2%	26.4%	24.7%	27.2%	24.4%	26.0%	27.7%	20.4%	23.4%	18.8%	18.3%	30.6%	—	—

* Gross before nominal amount of reinstatements

Source: Workers' Compensation Board, Assessment Department, Internal Reports

Table 7.8 Applications to Appeal Division by Employers

	1992	1993	1994
Prevention appeals	179	155	171
Relief of Costs S.39(1) (and ERA)	219	387	131
Costs Charged S.47(2)	19	16	14
Assessment	85	118	110
Transfer of Claim Cost S.10(8)	10	5	11
Reconsiderations			
96(1), 96(2), Ombudsman	N/A	18	15
Review Board Findings Appeals	N/A	95	79
Total	512	794	531

Source: Appeal Division, Annual Reports

Table 7.9 Employer Appeal Activity, 1988-94

	1988	1989	1990	1991	1992	1993	1994
Assessments	28	30	34	73	85	118	110
Section 39(1)	8	15	39	763	219	387	131
Section 47(2)	27	22	37	25	19	16	14

Source: Appeal Division Annual Reports

Table 7.10 Appeal Division Decisions on Certain Employer Appeals

	1992	1993	1994
Assessments and Relief of Cost Cases			
Allow	18%	17%	15%
Deny	76%	79%	81%
Partial	6%	4%	3%
Miscellaneous	0%	0%	0%
Total Decisions	297	200	151

Source: Annual Reports, Appeal Division and documents supplied by WCB

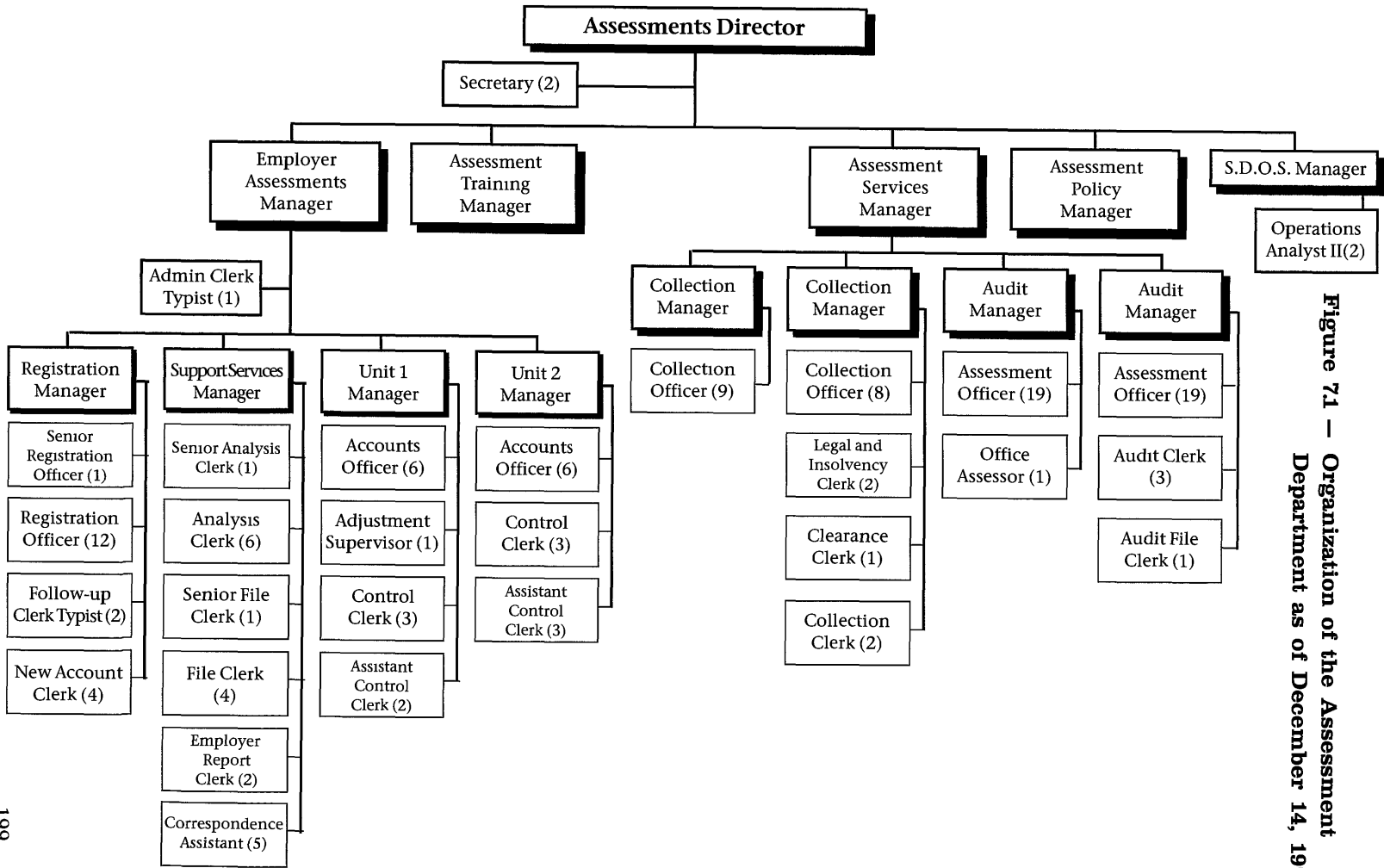
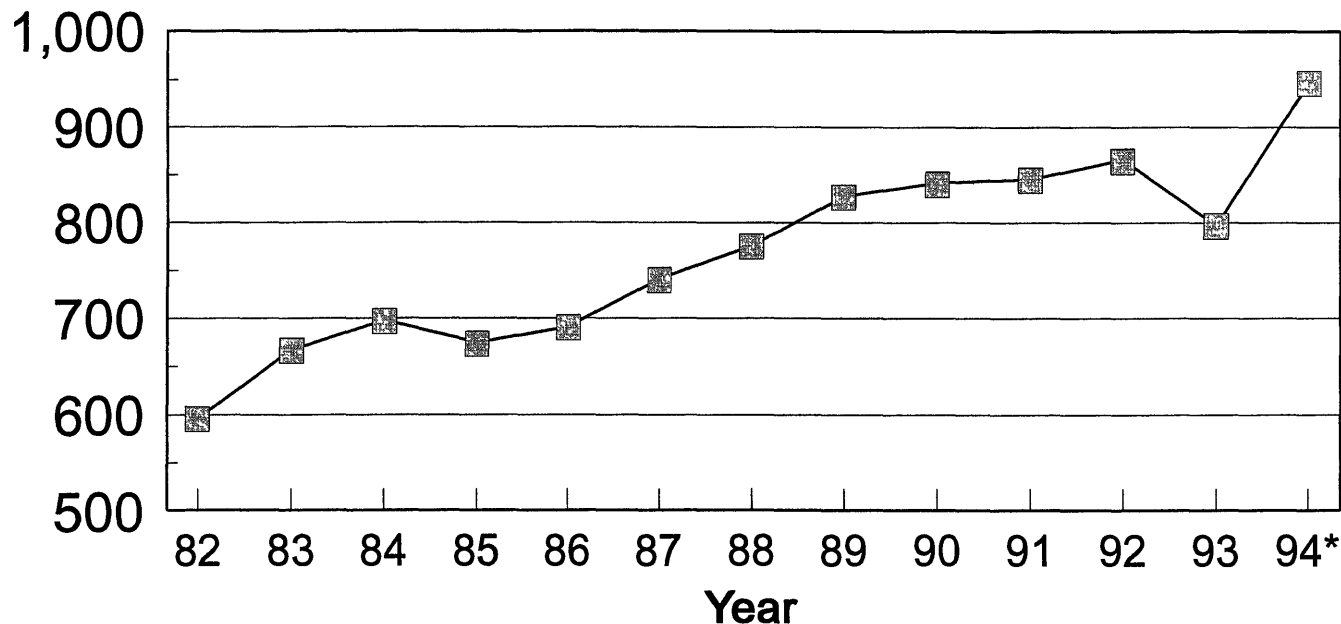


Figure 7.1 – Organization of the Assessment Department as of December 14, 1994

Figure 7.2 — Assessment Department Number of Employer Accounts per Staff Member

Accounts



* Implementation of Bill 63 effective January 1, 1994

Source: WCB, Assessment Department, Internal Reports

Chapter 8

SYSTEM OUTCOMES

Introduction

This chapter will provide an overview of outcomes in the workers' compensation system of British Columbia and will put some of those outcomes in perspective by comparing them with the other WCBs in Canada. In part it summarizes the material from earlier chapters with the aim of highlighting the performance of the system directly. In addition, we will rely on a graphical format that emphasizes the dynamic element in WCB performance.

It has been observed throughout North America that workers' compensation systems are influenced by economic conditions and by developments in the labour market. This is true in British Columbia as well. The British Columbia economy has been subject to significant cyclical fluctuation in employment. Figure 8.1 shows that employment actually declined from 1981 through 1983; but then expanded by nearly 500,000 during the 1983 to 1994 period (yielding a growth rate of 2.0 percent per year for the entire period).¹

Year to year, labour market conditions fluctuated widely as indicated in Figure 8.2. From a low of 6.7 percent in 1981, the unemployment rate more than doubled to 14.8 percent in 1984 (employment actually declined by over 6 percent) with the major international economic downturn. Then a long, slow recovery began, interrupted by another unemployment spike resulting from the recession of 1991–92. While a good deal of the unemployment has been generated by a labour force swelling due to immigration, it is still true that the job generation performance of the British Columbia economy has been sluggish. This is thought to be due in large part to the historical “endowment” of

¹ It is important to remember that WCB covered employment has followed a somewhat different, but broadly similar path as coverage increased over the period. However, due to data limitations we use total provincial employment as established by Statistics Canada for our denominator in calculated figures per worker.

industries in British Columbia, concentrated in the primary and extractive sectors rather than the higher growth service or technology sectors.²

During this 14-year period, average weekly earnings in British Columbia rose from \$363 per week to \$577 per week (3.6 percent per year), but prices rose even faster (4.5 percent per year). The net result was that real wages declined by 0.8 percent per year over the decade. This is shown in Figure 8.3 which also highlights the fact that real wages declined more rapidly during the first part of the period, when nominal wage increases were greater but were offset by price increases. Real earnings appear to have bottomed in 1988 and 1991 and have been edging up for the past few years.

Figure 8.4 indicates one way these trends have been manifested in the British Columbia workers' compensation system. It shows the trends in maximum and minimum weekly benefits (nominal terms) for the entire period, as presented in Chapter 5. The maximum benefit has generally increased at the same rate as average weekly earnings, while minimum weekly benefits have increased at the inflation rate. However, benefit maximums were substantially increased (23.5 percent) in 1986. This means that maximums grew at 6.6 percent per year over the entire period 1981 through 1994, while minimum benefits grew at only 4.5 percent per year. The result is growing disparity in benefit levels between high and low wage earners.

Utilization

Figure 8.5 indicates that these trends are not closely reflected in the growth of the WCB case population. The number of new claims registered at the WCB declined precipitously from 1981 to 1982 (by 19 percent — three times as great as the employment decline), and did not begin to increase until 1987. Thus the number of new claims registered at the WCB declined substantially more rapidly and stayed down longer than employment. Then new claims rose rapidly through 1990, only to subside once again with the recession and coincident with the governance changes at the WCB.

The number of wage-loss claims first paid declined even more (over 30 percent from 1981 to 1984), and did not surpass the previous peak until 1990. Figure 8.6 shows what appears to be a complex mix of secular, cyclical, and policy trends. The secular trend of employment by sector is leading to declining exposures to traditional risks of injury in the workplace. But cyclical labour market conditions hide much of the secular decline. Policy variables also intervene.

² See Kunin (1993) and Beck (1993) for thorough discussions of these trends and their implications for the WCB.

The decline in claims through the mid 1980s was partly a result of policy changes at the WCB for example. Plus there is likely a long-term trend to reduction in claims incidence resulting from Prevention Division efforts and private sector initiatives. Unfortunately, none of these influences can be identified separately from these aggregate data.

However, Figure 8.7 helps to indicate that there is a long-term declining trend in wage loss claims when controlling for employment levels. Further, the peaks in wage loss claims correspond very closely with troughs in the unemployment rate and vice versa. There are a number of reasons for this pattern, widely recognized and observed in other jurisdictions as well.³ It is also important to note that the figure uses total provincial employment, not WCB covered employment to derive the incidence rates. Since the percent of the labour force covered has risen over the period, the downward trend is actually understated in this figure.

When we break the analysis down by type of claim, the same basic trends are apparent. The trend in claims receiving health care only and short term disability claims first paid reflect a similar pattern, with a clear cyclical effect evident. The same is true for fatal claims, although the variation is greater in fatal claims. Long Term disability claims, however, clearly increased over the period (Figure 8.8). From a total of 2,631 in 1981, permanent disability claims declined nearly 20 percent by 1985. But then they rose rapidly after 1986, reaching a total of 3,935 in 1990. This was followed by another retrenchment coincident with the recession of 1991, and another rise to 1994. Thus, long term disability claims rose by 4.6 percent per year during the decade of the 1980s, but even faster (7.2 percent per year) thus far in the 1990s. This is a very significant increase, with important implications for WCB benefit costs and staffing levels. Since these claims are much more time consuming administratively and will have very long payment durations, some up to 50 years, this increase in long term disability claims needs urgent analytical attention, so that appropriate policy responses can be developed.

Figure 8.9 shows the total lost workdays paid by the WCB per 100 workers has trended up significantly since the mid 1980s. Over the entire period of 1981 through 1994, lost workdays per 100 workers increased by only 1.1 percent per year. However, the trend from the low point in 1985 through 1994 was 3.9 percent per year. While this is not a strong trend, it represents a growing burden on the British Columbia economy. In the mid 1990s the WCB is paying two lost work days per worker per year, up from 1.5 a decade earlier. Given sectoral employment trends and WCB prevention efforts, this figure presents a

³ See Victor, et al. (1992) for some U.S. examples.

disappointing picture. One would hope to see a declining burden of disability due to workplace injury and illness. It is important for the WCB and policymakers to gain a better understanding of these trends.

Timeliness and Duration

A major focus of workers' compensation systems around the world is on the timely payment of benefits, especially wage loss benefits, to injured workers. Much more attention is usually paid to the adequacy of benefits, but it is probably timeliness that is more important to the typical injured worker. In addition, the incidence of claims and their duration are the two greatest influences on overall system costs. We will review the WCB's performance on both timeliness and duration in this section.

Paylag Performance

The primary measure of promptness of payment that is used by the WCB is the paylag statistic, the percent of wage-loss claims where payment is made within 17 days of the first lost work day. Of course, the performance of an individual adjudicating unit depends largely upon the particular assignment the unit has taken on. For instance, the Occupational Disease Services unit handles claims that are especially difficult to adjudicate, and their paylag performance reflects that. The paylag measure is most appropriate for relatively simple short-term disability claims; nevertheless it has relevance for all units because of its direct relationship to perceived customer service performance. In particular, the trend in paylag over time can signal improvement or deterioration in average timeliness.

Table 8.1 shows the paylag statistics for the last three years, organized by adjudicating unit.⁴ For the entire WCB, 42 percent of short term disability claims were paid within 17 days in 1994. Individual SDL performance varied from 30 percent to over 70 percent (excluding special units like ODS, fatal, etc.). Historically, lower mainland adjudication units have shown higher paylags (poorer performance) than area offices.

Paylag performance reflects the number and complexity of claims received (neither of which are strictly controllable), relative to the staff complement actually available. Thus, vacancies, training requirements, illnesses, vacation schedules and other more or less unpredictable factors will impact on this meas-

⁴ Unfortunately, the reorganization of the lower mainland claims units into SDLs in November 1993 prevents their comparison further back in time.

ure. Given that claims are currently assigned on the basis of geographical location among the SDLs, there is no longer any necessary reason that paylag should even be comparable across units. Geographically oriented offices are more subject to the influence of single industry concentrations, as well. This is the reason behind the current Compensation Services Division efforts to develop more appropriate performance measures (as described briefly in Chapter 3).

More troubling than the comparisons among SDLs is the trend over time. While it is not obvious from Table 8.1, there seems to be a deterioration in paylag performance across most adjudication units. Statistics kept on the adjudication units that preceded the SDL reorganization in the lower mainland clearly showed a deterioration in performance from 1991 through 1993. For most Area Offices this appears to continue right through to 1994.

Figure 8.10 shows the aggregate paylag performance for the WCB for the period 1981 to 1994.⁵ It is not clear that the statistics are completely comparable over such a long period of time, due to the changing mix of cases (more occupational disease claims, more long term disability claims, etc.), statutory changes, organizational changes at the WCB, and so forth. It is also fair to point out that the paylag statistic has received varying levels of emphasis by WCB management over this period as well. However, it seems clear that performance slipped significantly in the mid 1980s, and may be deteriorating again in the mid 1990s. It was particularly frustrating for Compensation Services Division management to see the paylag performance improve only slightly for 1994 after the adjudication emergency and the Action Plan that addressed it. Further, monthly performance statistics show that the paylag performance was flat in August 1995 over August 1994, despite the mobilization of the Department to attack the problem.

Duration of Wage Loss Payment

Data on duration of disability are limited and difficult to compare. However, it seems clear that average durations have been rising, and rising rapidly at the WCB in recent years. Figure 8.11 shows this increase since 1990, presumably on a comparable basis.⁶ Of course, this figure reflects the relative incidence of temporary and permanent disability claims over time as well as labour market,

⁵ Summary data for 1984 and 1989 are not available.

⁶ These figures measure incurred lost work days due to all injuries, regardless of their year of origin. The WCB also maintains a measure of duration that refers only to claims originating in a given year. Average duration in this series has risen by about four days in the past decade or one-third as much as for all claims regardless of year of origin.

demographic, and other influences. Since we have known that temporary disability claims have been relatively stable or declining in the 1990s (Table A—1) and permanent disability claims have increased rapidly (Figure 8.8), this changing mix could account for much of the increase in the average shown in Figure 8.14. However, available evidence seems to show that average durations are increasing in every severity category. Such a trend needs immediate attention; it is critical to understand such a powerful cost driver.

Appellate Activity

The British Columbia workers' compensation system is fairly free of litigation, at least by North American standards. However, there is some question about whether recent trends threaten that state of affairs. Figure 8.12 shows that appeal activity at the Workers' Compensation Review Board (WCRB) grew rapidly during the period 1981 to 1994.⁷ It reflects an annual increase of nearly 9 percent in appeals received at the WCRB, 7 percent annually when corrected for employment levels. In other words, disputed claims are increasing more than four times as fast as employment in British Columbia and more than eight times as fast as new claims registered with the WCB.

Figure 8.12 shows that this increase has also been much greater than that of the underlying wage-loss claim population at the WCB, as shown in an increase of 8 percent annually in the WCRB appeal rate per 100 wage-loss claims first paid. Appeal activity has also increased at the Appeal Division level, although the record is not so long nor so clear. It appears that the trend to more litigious behaviour is taking root in British Columbia. The good news is that this is being done without domination by lawyers, as is characteristic of most United States jurisdictions.

Administrative Staffing and Costs

Figure 8.13 gives a summary picture of the human resources employed at the WCB for the period 1982 to 1994. The full time equivalent (fte) complement of the WCB has grown at 3.6 percent per year throughout the period, nearly twice as fast as the employed population. However, as is obvious from the figure, most of this growth took place between 1985 and 1991. Total WCB employment increased by over 60 percent from 1985 to 1991, but only by 10 percent since 1991 (0.2 percent per year faster than overall employment growth).

⁷ The measure is not precise, since there can be multiple appeals involving a single claim, but the trend is overwhelming.

As indicated earlier, the WCB does a great many things other than just process workers' compensation claims, from administering the occupational safety and health program (to prevent injuries and diseases in the first place) to resolving disputes over compensation issues to funding the costs of the entire system. Therefore, it may be more informative to look at the staffing level of the Compensation Services Division alone. Figure 8.14 shows the growth in Compensation Services Division staff relative to claims over the 1981 to 1994 period. In this figure, it appears that staffing ratios were stable or declining through the 1980s and took off with the reorganization of the WCB in 1991. Clearly, the focus of new initiatives like the Service Delivery Strategy (SDS) project within Compensation Services reflect the concerns of current management about declining service quality and increasing administrative costs (See discussion in Chapter 3). It remains to be seen whether the trends can be turned around, however.

The WCB performs an invaluable public mission, and the cost of performing that mission is not the only consideration in evaluating the performance of the agency. However, administrative costs are an issue, particularly in these days of scarce resources, and the efficiency of the WCB as an administrative entity is relevant to both injured workers and their employers. Figure 8.15 shows that WCB administrative costs have grown substantially faster than inflation since 1987. For the entire period, administrative costs grew at an unadjusted rate of 10.0 percent. After adjusting for general inflation and increases in employment, the real growth rate per capita is revealed to be 3.2 percent per year. Again, it seems apparent that this growth began well before the change in WCB administration in 1991. It is also clear that the upward spiral ended in 1994. Control of administrative costs is a priority of the current WCB management.

System Costs

Total Accident Fund payments have increased by 9.6 percent annually from 1981 through 1994, from \$232 million in 1981 to \$769 million in 1994. Further, this represents a sizeable increase of 7.5 percent per year in payments per employed worker.⁸ Figure 8.16 shows fund payments in 1995 dollars (i.e. adjusted for inflation) by type of payment by year. The steady rise beginning in 1985, and the acceleration after 1991 are readily apparent in this figure. It appears that wage-loss payments, health care benefits and pension payments have all contributed substantially to these increases. However, over the entire period

⁸ A reminder that this growth rate would be somewhat less per covered worker, if such a series were available.

pension payments grew the fastest, at 12.4 percent per year. In 1993, pension payments substantially exceeded wage loss payments, although that was partly due to the clearing of a backlog. Nevertheless, the trend is clear; especially since pension payments are of long duration and thus keep building into the base of expenditures year after year.

Against that mounting burden of expenditures, the WCB figures for assessable payrolls are shown in Figure 8.17. Again, substantial growth is seen, especially since 1985 (1994 reflects the move to universal coverage). WCB assessable payrolls grew by 7.9 percent per year over the entire period, 3.3 percent annually after adjustment for inflation. Of course, an annual rate of growth of 9.6 percent in fund payments and 7.9 percent in assessable payrolls means either that there had to be some other source of income, or an increase in assessment rates, or both.

Part of the gap has been filled by investment income. Figure 8.18 shows that WCB annual investment income rose from less than \$150 million in 1983 to around \$350 million in 1993, increasing from 23 percent to 33 percent of total revenues. This greater contribution of investment income reflects the increasing reserves held by the Board for future obligations, as well as improved investment performance. During the latter half of the 1980s, the annual investment return on reserves exceeded the WCB discount rate (2.375 percent until 1993) by more than the rate of inflation. Real rates of return on WCB investment ranged from 5.4 to 7.8 percent annually over this period, making a very tangible contribution to WCB income and permitting lower assessment rates than otherwise would have been necessary.

Figure 8.19 shows the balance between assessment income and investment income for the period 1981 through 1994. The noticeable dip in assessment income in 1987 reflects the rebates of \$99 million in that year. There was also a smaller rebate in 1988. While investment returns have risen substantially over the period, they have played a diminishing role in WCB funding since 1990 because of the rapid rise in WCB costs.

The net impact of the growth in benefit costs, administrative costs, assessment base, and investment income is reflected in Figure 8.20. To employers, this figure represents the "bottom line." It shows the average assessment rate for the WCB from 1981 through 1994. Assessment rates came down in the late 1980s as the fund approached a fully funded position in 1986 against a backdrop of declining employment, declining claims, and declining costs. As claims and costs picked up again in the latter 1980s the fund moved back into a long-term deficit position. The surplus was exhausted by 1992 and the Board has been slightly underfunded since.

Finally, Figure 8.21 presents the estimated real fund balance at the end of each year from 1981 through 1994. The sizable unfunded liabilities of the early 1980s were eliminated by the declining rate (Figure 8.6), the rising returns on investments (Figure 8.18), and the maintenance of effort represented by flat assessment rates. In the early 1990s, the WCB was trying to attain a fully funded position without dramatic increases in assessment rates. However, the drain of rapidly rising pension and health care costs kept that goal elusively out of reach. Current plans at the WCB call for attaining annual funding balance by 1997 and a return to full funding by the year 2000.

Comparisons with Other Canadian Boards

Most of our attention in this volume has been on describing the way that the British Columbia workers' compensation system operates, the benefits it provides, and the ways in which it resolves disputes. But all this occurs within the larger context of Canadian, indeed of North American, workers' compensation practice. Utilizing data collected and analysed by the Association of Workers' Compensation Boards of Canada and the Employment Standards Administration of the U.S. Department of Labour, we will examine some gross system performance measures in a comparative perspective with other Canadian Boards and, for some measures, selected U.S. systems.

Table 8.2 shows the waiting periods for workers' compensation wage-loss benefits in the Canadian jurisdictions. With the exceptions of New Brunswick and Nova Scotia, there are no waiting periods for workers' compensation benefits in Canada. New Brunswick maintains a 3-day waiting period (compensable after 30 days of disability), which is comparable with the best of the U.S. states. Some 21 states maintain a 3-day waiting period, but 23 states still have a 7-day waiting period (although many of those make the first 7 days compensable after only 14 days of total disability). The remainder are scattered in between, with no U.S. jurisdictions matching the British Columbia practice.

Table 8.3 shows the maximum earnings covered for workers' compensation benefit purposes as of January 1, 1995. Only Ontario covers earnings to a higher level than British Columbia; the Yukon is comparable to British Columbia. Boards in Quebec, Saskatchewan, Manitoba, and Northwest Territories have maximums around \$48,000. Other WCBs have lower limits, all the way down to Prince Edward Island at \$35,000 and Nova Scotia at \$38,000.

Wage-Loss Benefits

These covered earnings figures translate into the maximum weekly benefit for temporary total disability according to the formulas shown in Table 8.4. Further, the table shows the maximum weekly payment for temporary total disability in all jurisdictions for 1995. Most Canadian jurisdictions now calculate workers' compensation wage loss benefits net of income taxes and other mandatory payments (i.e. Canada Pension Plan and Unemployment Insurance). This policy change reflects the impact of progressive tax rate schedules and a growing number of other substantial deductions from gross earnings. The most common figure in Canada is 90 percent of net (or spendable) earnings.

British Columbia, Nova Scotia, and Yukon are the exceptions to this rule and all use the 75 percent of average gross earnings concept. Whether an injured worker receives more or less under these two different regimes depends on his/her family situation, since the number of dependants and their tax impact is the major determinant of the difference between 75 percent of gross earnings and 90 percent of net earnings. As a general rule, workers with large families do better with 90 percent of net earnings, since their income tax payments are lower.

U.S. jurisdictions generally use two-thirds of gross earnings to calculate workers' compensation wage loss benefits, although there are a number of exceptions. About 7 or 8 U.S. states currently employ the "spendable earnings" or net earnings approach, although they use replacement formulas ranging from 70 to 80 percent of net earnings; none approaches the Canadian standard of 90 percent net wage loss replacement.

Table 8.4 also shows the maximum weekly benefit amount for 1995 in all Canadian jurisdictions. British Columbia and Yukon around \$750 per week are far above the other Boards in maximums. Ontario, the next highest, is about 11 percent lower than British Columbia, and maximums range all the way down to \$384 per week in Prince Edward Island, about half the British Columbia level. Of course, it needs to be remembered that this is the maximum weekly benefit, not the typical or average benefit. Thus, low maximums serve to reduce wage loss replacement rates only for high wage workers. These numbers would have no significance at all for an injured worker who earns substantially less than the average wage level.

This is demonstrated in Figure 8.22 which shows the maximum weekly compensation rate for temporary total disability benefits as a percentage of the average industrial aggregate weekly wage in each jurisdiction. British Columbia again ranks first, as it maintains the highest maximum benefit relative to average wage levels of any province. British Columbia, at nearly 134 percent of

average wages, is trailed by Saskatchewan at 116 percent and Ontario at 112 percent. Prince Edward Island imposes a maximum that is only 84 percent of its average industrial wage, or about two-thirds as much as British Columbia.

Assuming the basic wage-loss replacement ratios presented in Table 8.4 represent policy choices about how injured workers should be compensated, Figure 8.22 shows how thoroughly workers are protected relative to their earnings. For example, workers in British Columbia will receive the stated wage loss benefit of 75 percent of gross pay, provided they do not earn more than 134 percent of the average wage or about \$52,400 in 1995 (as was shown in Table 8.3). By contrast, injured workers in Prince Edward Island will receive the statutory replacement of 80 percent of their net pay only if they earn less than \$35,000 in 1995. Thus, British Columbia provides “full wage-loss protection” to a great many more of its workers than does Prince Edward Island.

U.S. jurisdictions also show considerable variation in maximum benefit levels. They range from 200 percent of the state average weekly wage in Iowa (approximately \$1,104 Canadian [CD] per week), and 150 percent of the state average weekly wage in New Hampshire (\$965 CD) and Vermont (\$876 CD), down to 66 and 2/3 of the state average weekly wage in California (\$549 CD per week) and Mississippi (\$342 CD per week).⁹ The typical U.S. jurisdiction sets its maximum benefit at 100 percent of the state average weekly wage (21 states), although there are a significant number both above and below that standard, as in Canada.

Table 8.5 repeats this analysis for the minimum weekly benefit payable for wage loss due to temporary disability. In this analysis, Yukon, Northwest Territories, and Ontario all exceed the British Columbia minimum of \$266 per week. It should be noted that all of these jurisdictions, including British Columbia, pay 100 percent earnings replacement if that amount is less than the minimum benefit. For this reason, minimum benefits have less policy significance than maximums. Figure 8.23 reveals that Canadian provinces show less variation in minimum benefits than in maximum benefits, when expressed relative to the average industrial wage. British Columbia still falls near the top with a minimum benefit at about 47 percent of the average industrial wage. The highest is Saskatchewan at 51 percent and the lowest is Nova Scotia at 30 percent.

U.S. jurisdictions range more widely on this measure. Lowest statutory minimums are in Arkansas, Florida and Puerto Rico at \$27 CD per week, however Florida permits a lower payment if the injured workers wage was less than \$27 CD per week. The most generous minimum is in Idaho, at 45 percent of the state average weekly wage (\$244 CD). North Dakota, South Dakota and Vermont

⁹ Using an exchange rate of \$1 Canadian = \$0.74 U.S.

set higher percentage minimums, but all permit the payment of the actual wage as a weekly benefit if it is below the statutory minimum.

Permanent or long-term disability benefits are considerably more complicated than temporary or short-term benefits, but they are probably also more important in a policy sense. If benefits are inadequate, temporarily injured workers will suffer somewhat greater economic hardship during their recovery; but permanently disabled workers will be impoverished. This creates a social problem in that persons, whether disabled or not, need to be maintained in a sense of dignity. So inadequate workers' compensation benefits will lead to demands on other income maintenance programs, or additional suffering on the part of those who have already been made to suffer on account of their accident or illness and resulting disability. Therefore, the adequacy of permanent disability benefits are critically important from a social policy perspective.

Table 8.6 presents the basic facts about permanent disability benefits in Canadian jurisdictions.¹⁰ A majority of Canadian jurisdictions provide both periodic wage-loss payments and lump sum payments for impairment. British Columbia, Northwest Territories, Nova Scotia and Prince Edward Island are exceptions to this rule. However, in British Columbia's case, this is reflected in a more generous maximum benefit for wage-loss payments. In addition, other jurisdictions have, at best, annual automatic adjustment of benefit levels for changes in price levels, while British Columbia adjusts benefits for inflation twice annually. In times of rapid inflation, this provides more adequate protection for the incomes of long-term disabled workers.

There are four jurisdictions that make explicit offsets for Canada Pension Plan benefits for older workers; plus a number have special provisions relating to turning the wage loss benefit payments into annuities at age 65. British Columbia does not offset in any way for pension benefits, but permanent disability awards are adjusted for age, as discussed in Chapter 5. As shown in Table 8.6, minimum monthly payments are also relatively generous in British Columbia, exceeded only by Northwest Territories and Ontario.

U.S. jurisdictions vary widely in permanent disability benefit structures. Some are comparable to Canadian practice, while others fall far short of the Canadian standard. While weekly maximum benefits may be higher, inflation protection is generally less adequate. In addition, most U.S. jurisdictions are more aggressive than British Columbia in offsetting long-term disability benefits with other income maintenance payments, such as unemployment insurance, federal disability insurance, and even retirement pensions.

¹⁰ This table simplifies the situation considerably. Benefits frequently vary with date of injury, age of worker, family status, or other circumstances. For full detail see the Association of Workers' Compensation Boards of Canada publications, or those of individual WCBs.

It is difficult to make any overall judgment about permanent disability benefits, particularly because of the tradeoff between lump sum and periodic payments. Is a disabled worker in British Columbia better off because he/she receives all benefits in monthly pension payments, as opposed to a smaller monthly payment and a lump sum up front? In addition, it is difficult to make valid comparisons since the outcomes for permanent disability awards in most jurisdictions depend on the specific nature of the injury, the previous occupation of the injured worker, and the personal circumstances of the worker. Also, a simple comparison like that of Table 8.6 does not show supplementary benefits like vehicle and housing modifications for seriously disabled claimants. In summary, British Columbia maintains permanent disability benefits that are comparable to the best available in North America.

Cost to Employers

The number of sub-classes, or rate groups, was introduced in Chapter 7. It was pointed out there that British Columbia, with 71 separate rate groups, has fewer than the other large Canadian provinces. As shown in Table 8.7, Quebec maintains 321 separate rate groups, while Ontario has 219 and Alberta has 151. The implication of a larger number of rate groups is that there is less heterogeneity among the firms in a particular rate group, presuming that the rate groups are designed to be appropriate to the industrial structure of the province. This prevents the situation where firms in one line of business are perpetually in deficit while others are perpetually in surplus because the rates are not appropriate to either, but rather to some combination of the two. However, with an effective experience rating system, class rates can accommodate individual firm loss experience over time, so this need not be a serious shortcoming.

One area of concern is in the balance of rate groups whose rates increased and decreased for 1995. While Ontario figures are not included in the table, the general situation in most provinces shows about equal numbers of increases and decreases, or even more decreases than increases. However, for British Columbia there are three times (for Saskatchewan there are two times) as many increases as decreases. This reflects the upward pressure on rates in British Columbia due to the growing unfunded liability, but it also seems to imply that British Columbia is out of step with the rest of the Canadian jurisdictions.

While the British Columbia system is designed to be balanced, i.e. each sub-class aims for a long-term equilibrium between costs and revenues, there are some significant distortions in the current system. At the end of 1994, a total of 39 rateable sub-classes were in deficit (unfunded liability) compared to only 21 in surplus (unappropriated balance). Further, considering only those sub-classes

where the deficit or surplus is more than the 1994 total assessment income shows 17 in “substantial” deficit, compared to 10 in “substantial” surplus.

The WCB has begun to address these problems. For example, in sub-class 621 Retail Stores, the 1994 year end unfunded liability was \$64 million, against an assessment income in 1994 of only \$36.6 million. This single sub-class was responsible for nearly 20 percent of the total unfunded liability of the WCB. The solution adopted in 1995 is to split the sub-class into three new sub-classes, 671 –Supermarkets and Butchershops, 672–Department Stores, and 673–General Retail and Services. The plan to apportion the unfunded liability among all three new classes was very controversial, as the entire amount will be retired over 5 years with a \$.30 per \$100 surcharge for all former members of sub-class 621. Members of the department store and general retail groups claimed that all of the unfunded liability arose among the supermarket members of their former sub-class and that requiring them to help retire the deficit was unfair.

In addition, British Columbia found it necessary to relax the 20 percent swing limits for individual sub-classes in 1994. This provision is designed to prevent excessive variability in sub-class rates from year to year. But it was determined that a small number of sub-classes were continuing to fall further and further into deficit because their costs were rising faster than their assessment rates. Raising the 20 percent swing limit for these classes to 30 percent meant that they might begin to catch up with their sub-class unfunded liability, unless costs were rising faster than 30 percent annually. Of course, it also meant that their base rates could go up by as much as 30 percent rather than 20 percent, in addition to any ERA changes justified by individual employer experience.

Table 8.8 contains the summary Canadian data on assessment rates. It shows the maximum assessable earnings for 1995, as well as the minimum yearly assessment for each assessment unit. The lowest assessment rate and highest assessment rate for any rating group are also shown in the table. British Columbia has a low of \$.22 per \$100 of payroll for the lowest rated group (which happens to be labour unions and employer associations), while other Canadian jurisdictions range from \$.15 to \$.75 per \$100 for their lowest classification. The Yukon and Quebec are the outliers in this instance. Obviously the precise nature of the classification and rate grouping has an important influence on the rates at the extremes.

Top assessment rates reflect the degree of hazard of industries in the different provinces, as well as system benefits and other policy variables. The highest assessment rate in British Columbia is for bridge building, pile driving, dam construction, tunnelling, and steel frame erection at \$24.67 per \$100 of payroll. Maximum assessment rates in other jurisdictions are generally lower, except for Quebec and Nova Scotia. Again, there is no particular policy significance to

these maximum and minimum rates in and of themselves. The real question is whether these rates reflect an underlying dynamic balance in the system.

In most jurisdictions the class rate is only the beginning place for rate determination. Table 8.9 shows the experience rating schemes utilized in the various Canadian provinces. It is clear that British Columbia has been one of the leaders, both in early implementation of a universal plan and in its experience rating provisions. As is shown in the table, Ontario in 1984 and British Columbia in 1986, were the earliest “universal” experience rating programs in Canada. Nova Scotia is considering the possibility of implementing an experience rating program and Northwest Territories intends to implement a program in 1996, based on their “shadow” year experience during 1995.

British Columbia’s program is “prospective” in that it applies past experience to deriving future premiums. After these premiums are set, there is no further change and the employer knows precisely what the workers’ compensation rate will be for the year. Under a “retrospective” plan, the experience in future years is used to adjust past workers’ compensation assessments, resulting in a rebate or an extra charge against past payrolls. The British Columbia system is also designed to be “balanced” which means that each dollar rebated to an employer with an above average record must be offset by a dollar taken from an employer with a below average record.

Experience rating has been very much more controversial in Canada than in the United States, partly due to the “collective liability” principle. In Canada, *employers as a whole* have the responsibility for paying workers’ compensation benefits to injured workers, it is a social obligation. The slow development of experience rating in Canada can be traced to labour’s philosophical opposition to such schemes. Labour has believed that such programs, especially those based only on monetary payments, create incentives for “claims avoidance” rather than “claims prevention.”¹¹ Nevertheless, employer pressures have mounted for experience rating in Canada and the political system has responded. As a result, the past decade has seen experience rating schemes spread steadily across Canada. However, the details of these plans differ dramatically among jurisdictions, and so do the incentives created.

First, the amount of surcharge or rebate differs across the provinces. British Columbia, with a maximum surcharge/rebate of 33 percent, is in the middle of Canadian experience. Quebec and Ontario have the most aggressive experience rating programs (+200/-100% and +180/-90% respectively), with a far greater range of merit/demerit than British Columbia, particularly for large firms. The

¹¹ See Ison (1991) for a forceful and effective presentation of this point of view. It is also discussed more fully in Chapter 7 of the present volume.

degree of participation in experience rating programs usually depends on the size of the firm, with larger firms allowed fuller participation. This reflects the greater “actuarial credibility” of large firms. In addition, Manitoba and Quebec have special programs designed for very large employers that are also listed in Table 8.9.

The Ontario New Experimental Experience Rating (NEER) program is the only Canadian plan that has been adequately evaluated.¹² This study in Ontario concluded that NEER had increased employers interest in safety and prevention activities (“claims prevention”), and had also increased their propensity to appeal a claim (“claims avoidance”). This is the most credible study to date of the impact of experience rating programs in Canada. The WCB of British Columbia is currently conducting an empirical study of the effect of the Experience Rated Assessment (ERA) plan in the province. Final results are due in 1996.

The current frontier in experience rating in Canada is tying employer insurance rates to specific safety performance. The Voluntary Incentive Plan in Alberta, the Workwell Program in Ontario, and the Merit/Surcharge Program in Manitoba all link employer assessment rates to safety performance, generally through on-site safety audits as well as performance monitoring. Such programs have the potential to resolve labour concerns about experience rating, but they also give rise to employer fears about government interference in their operations. This debate has not yet played out in British Columbia.

Figure 8.24 shows the bottom line from the employer perspective, average assessment rates, for all Canadian provinces in 1995. Each province is unique, and the rates are not directly comparable due to differing industrial structure, differing benefits, and differing administrative regimes. However, these figures do provide an overall sense of the cost of the workers’ compensation system, particularly when considered in tandem with the benefit comparisons provided earlier. British Columbia stands in the lower middle of the pack, with an average assessment rate of \$2.26 in 1995. The lowest rates are in the Yukon and New Brunswick at \$1.61 and \$1.70 respectively. The highest average rates in Canada are in Newfoundland at \$3.07 and Ontario at \$3.00 per \$100 of payroll. Alberta and Manitoba fall slightly below British Columbia at \$1.97 and \$2.15 respectively. The summary judgment is that British Columbia gets benefits that rank among the best in Canada at a cost that seems very reasonable.

¹² Hyatt and Kralj (1995). See also Kralj (1994).

Table 8.1 Paylag by Services Delivery Location

	1992 %	1993 %	1994 %
Lower Mainland			
Abbotsford	—	—	35.9
Burnaby	—	—	38.6
Coquitlam	—	—	38.1
Richmond	—	—	42.6
Surrey	—	—	33.4
Vancouver Centre/North	—	—	30.9
Vancouver South	—	—	31.4
Outside Lower Mainland			
Courtenay	65.5	62.9	60.8
Cranbrook	72.4	72.0	71.7
Kamloops	58.9	53.7	58.2
Nanaimo	49.2	49.6	46.8
Nelson	56.1	52.5	68.9
Prince George	63.9	61.8	59.2
Terrace	54.7	48.9	49.7
Vernon	54.8	57.4	51.2
Victoria	56.6	65.4	59.6
Central Client Services			
ODS	11.3	4.9	5.7
Fatal	—	5.0	4.0
Rehab. Centre	17.1	22.2	12.5
TEC (Training Unit)	50.4	29.1	30.2
IPT			6.0
Total All Offices (Avg.)	44.7	38.9	42.0

The above figures are the percentages of Short Term Disability claims paid within 17 days from the date of disablement.

Source: Workers' Compensation Board Internal Report

Table 8.2 Waiting Periods - Canadian WCB Jurisdictions

Jurisdiction	WCB Pays	WCB Pays	Waiting Period
	Compensation for Day of Injury	Compensation Following Day of Injury	
Alberta	No	Yes	No
British Columbia	No	Yes	No
Manitoba	No	Yes	No
New Brunswick ¹	No	No	3 days ¹
Newfoundland	No	Yes	No
Northwest Territories	No	Yes	No
Nova Scotia ²	No	Yes	1 day
Ontario	No	Yes	No
Prince Edward Island	No	Yes	No
Quebec	No	Yes	No
Saskatchewan	No	Yes	No
Yukon	No	Yes	No

¹ If worker is disabled for more than 30 days, the Board pays the worker for the three working days following the injury.

² When the new *Workers Compensation Act* is proclaimed law, a waiting period equivalent to 2/3rds of what the WCB determines to be the worker's weekly benefit will come into effect. If the WCB and an employer have entered into an agreement whereby the employer pays the worker's benefits, the WCB will reimburse the employer.

Note: Waiting periods do not affect the worker's right to medical aid from the date of injury.

Source: Association of Workers' Compensation Boards of Canada

Table 8.3 Maximum Earnings Covered

Jurisdiction	Annual Amount
Alberta	\$43,000
British Columbia	\$52,400
Manitoba	\$48,160
New Brunswick	\$42,100
Newfoundland	\$45,500
Northwest Territories	\$47,500
Nova Scotia	\$38,000
Ontario	\$55,400
Prince Edward Island	\$35,000
Quebec	\$48,000
Saskatchewan	\$48,000 *
Yukon	\$51,900 *

* Assessable maximum is slightly lower

Source: Association of Workers' Compensation Boards of Canada

Table 8.4 Maximum Weekly Benefits for Temporary Disability

Jurisdiction	% of Earnings	Maximum Weekly Payments
Alberta	90% of net earnings ¹	\$535.92
British Columbia	75% of average gross earnings	\$753.70
Manitoba	90% of net average earnings ¹³	\$547.42 ²
New Brunswick	80% of net earnings for first	\$463.30
	39 weeks	
	85% after 39 weeks	\$492.25 ⁴
Newfoundland	First 39 continuous weeks based	\$457.76 ²
	on 75% of net earnings \$610.35	
	After 39 continuous weeks	\$488.28 ²
	based on 80% of net earnings	
	of \$610.35	
Northwest Territories	90% of net earnings ¹	\$640.31 ²
Nova Scotia	75% of gross earnings	\$548.08
Ontario	90% of net average earnings ¹	\$669.10 ²
Prince Edward Island	80% of net for first 39 weeks	\$383.79
	85% of net after 39 weeks	
Quebec	90% of weighted net income ¹	\$585.35 ²
Saskatchewan	90% of net earnings ¹	\$571.00 ²
Yukon	75% of gross earnings	\$746.48

¹ 90% of net earnings arrived at after deductions for U.I., C.P.P. and Income Tax

² For a worker with a spouse and two dependants

³ After 24 months of cumulative benefits, 80% of net average earnings

⁴ For a worker with a spouse. Number of dependants not applicable

Source: Association of Workers' Compensation Boards of Canada

Table 8.5 Minimum Weekly Benefits for Temporary Disability

Jurisdiction	Minimum Weekly Payments
Alberta	\$223.00 or 100% of net earnings if less
British Columbia	\$265.92 or 100% of earnings if less
Manitoba	None
New Brunswick	None
Newfoundland	\$200.00 or 100% of net earnings if less
Northwest Territories	\$301.44 or 100% of earnings if less
Nova Scotia	\$147
Ontario	\$291.26 or 100% of earnings if less
Prince Edward Island	None
Quebec	\$223.00*
Saskatchewan	\$245.27 or 100% of earnings if less
Yukon	\$307.67 or 100% of earnings if less

* For a worker with a spouse and two dependants

Source: Association of Workers' Compensation Boards of Canada

Table 8.6 Permanent Disability Awards and Escalation Benefits

Jurisdiction	Lump Sum Payments	Maximum Monthly Payments	Minumum Monthly Payments	Adjustment Mechanism
Alberta	Max. \$60,000 Min. \$1,200	\$2,328.69	\$969	Ad hoc
British Columbia	—	\$3,275.00	\$1,152.40	Automatic - semi annual
Manitoba*	Max. \$96,460 Min. \$318	\$2,371.15** as earnings loss to age 65	\$816	Automatic - biennial
New Brunswick*	Max. \$42,100 Min. \$500	\$2,133.08 as earnings loss to age 65 (based on 85% of net)	Minimum does not apply to cases after 1/1/93	Ad hoc
Newfoundland	Max. \$45,500 Min. \$1,000	Permanent total disability \$2,848.73/month	Permanent total disability \$647.45/month	Automatic - annual
Northwest Territories	—	\$2,774.69	\$1,306.25	Automatic - annual
Nova Scotia	—	\$2,375	\$637	Ad hoc
Ontario*	\$50,973.44	\$2,899.43	\$1,262.13	Automatic - annual
Prince Edward Island	—	\$1,650.30	No absolute minimum monthly payment	Automatic - annual
Quebec*	Max. \$71,270 Min. \$712	Max \$2,634.01**	\$857	Automatic - annual
Saskatchewan	Max. \$22,600 for impairment Min. \$1,100 for impairment	Max. \$2,580.25	Min. \$1,062.81	Automatic - annual
Yukon	\$80,000	Max. \$3,244	No minimum	Automatic - annual

* Dual award system for permanent disability - lump sum for impairment and earnings loss to age 65

** For a dependant spouse and 2 dependant children

Source: Association of Workers' Compensation Boards of Canada

Table 8.7 Rate Groups and Changes in Assessment Rates for 1995

Jurisdiction	No. of Sectors/ Classes	No. of Rate Groups/ Units	No. of Actual Rates	No. of Industries (Ind. Codes)	No. of Rate Groups Increased	No. of Rate Groups Decreased	No. Not Changed	New
Alberta	12(1)	151	213	515	189*	321*	5*	—
British Columbia	14(2)	71(3)	71(3)	390	45	14	9	3(3)
Manitoba	8	249	658	249	128(High) 147(Low)	119 99	2 3	1
New Brunswick	5	58	58	58(6)	7	48	3	—
Newfoundland	7	84	84	591	44	39	1	0
Northwest Territories	8	37	N/A	N/A	4	12	17	4(4)
Nova Scotia	9	150	N/A	150	0	0	150	—
Ontario	9	219	N/A	N/A	N/A	N/A	N/A	—
Prince Edward Island	6	38	38(5)	342	7	6	25	—
Quebec	5	321	327	N/A	129	198	0	—
Saskatchewan	11	86	86	537	40	17	29	—
Yukon	6(1)	6	6	86	0	0	6	—

* These numbers are based on the number of industries, not rate groups

- (1) One is the provincial/territorial government
- (2) Four are self-insurers, one of which is the provincial government
- (3) Reflects splitting old Subclass 0621 (retail) into 3 new classes in 1995
- (4) Four have been amalgamated
- (5) Does not include experience rates
- (6) Currently in the process of establishing industry code structure

Source: Association of Workers' Compensation Boards of Canada

Table 8.8 Key Assessment Information for 1995

Jurisdiction	Maximum Assessable* Earnings 1995	Minumum Yearly Assessment 1995	Lowest Assessment Rate 1995	Highest Assessment Rate 1995	Average Assessment Rate 1995
Alberta	\$43,000	\$100	\$0.20	\$11.57	\$1.97
British Columbia	\$52,400	\$25	\$0.22	\$24.67	\$2.26 (1)
Manitoba	\$48,160	(2)	\$0.39	\$20.41	\$2.15
New Brunswick	\$42,100	\$50	\$0.22	\$9.49	\$1.70
Newfoundland	\$45,500	\$50	\$0.37	\$18.52	\$3.07
Northwest Territories	\$47,500	\$50	\$0.50	\$11.50	\$2.54
Nova Scotia	\$38,000	\$10	\$0.38	\$38.15	\$2.54
Ontario	\$55,400	\$100	\$0.24	\$18.14	\$3.00
Prince Edward Island	\$35,000	\$50 - \$100 (3)	\$0.27	\$12.00	\$1.98
Quebec	\$48,000	\$65	\$0.65	\$34.68	\$2.60
Saskatchewan	\$45,000 (4)	\$50 (5)	\$0.15	\$14.30	\$1.79
Yukon	\$50,600 (6)	\$25	\$0.75	\$2.50	\$1.61

Extreme caution should be exercised in how these figures are used as they are not strictly comparable.

* "Maximum Assessable Earnings" is the maximum annual amount of earnings for each worker to be used in computing the amount of payroll for the purposes of assessment. "Maximum Insurable Earnings" is the maximum annual amount of earnings for each worker to be considered in determining the rate for payment of compensation.

** Estimated rates for all jurisdictions except Quebec; in Quebec this figure represents the decreed rate set at the beginning of 1995.

(1) 1995 Average rate includes Bill 63 employers

(2) \$100 for compulsory industries; \$150 for non compulsory industries

(3) Non resident employers

(4) Maximum insurable earnings are \$48,000 per year

(5) \$100 in forestry industries

(6) Maximum insurable earnings are \$51,900

Source: Association of Workers' Compensation Boards of Canada

Table 8.9 Summary of Experience Rating Programs in Canada

Jurisdiction	Year (1)	Title	Eligibility	Effect	Balance	Surcharge/ Rebate Spread*
Alberta	1987	Experience Rating Program ERP	Employers with total premiums of at least \$3,000 over 3-year period	prospective	balanced	+40%/-40% of base assessment
	1989	Voluntary Incentive Plan	Individual employers or groups of employers with at least \$75,000 in expected costs	retrospective	not balanced	difference between expected and actual costs are refunded Maximum refund or surcharge is equal to expected costs
British Columbia	1986	Experienced Rated Assessments (ERA)	All employers	prospective	balanced	+33%/-33% of base assessment
Manitoba	1989	Experience Sensitive Rating	All employers	prospective	balanced	+40%/-25% of base assessment
	1992	Merit/Surcharge Program	Employers with at least one annual payroll of \$2 million or more in any of the qualifying years	retrospective	balanced	equal %
New Brunswick	1990	Experience Rating System	Employers with premiums of at least \$3,000 over a 3-year period	prospective	balanced	+40%/-40% of base assessment

Table 8.9 Summary of Experience Rating Programs in Canada (Continued)

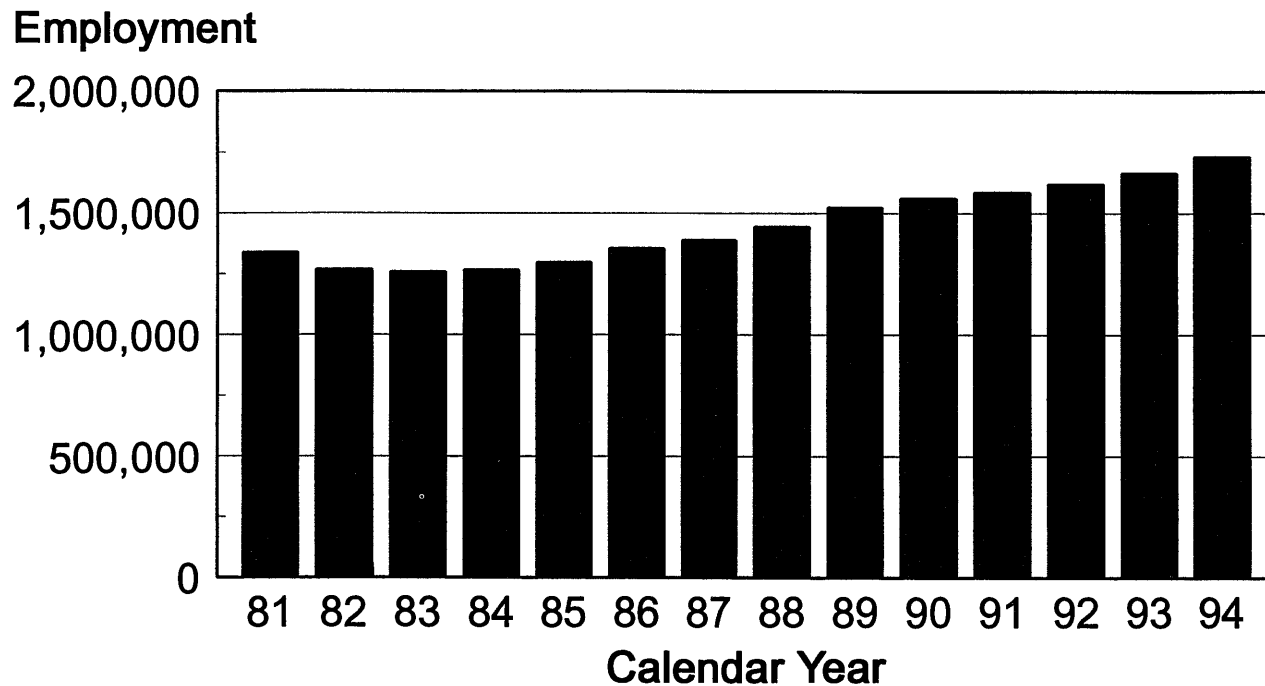
Jurisdiction	Year (1)	Title	Eligibility	Effect	Balance	Surcharge/ Rebate Spread*
	1992	Enhanced Participation				participation 25% plus 1% for each \$500 of assessments over \$1,000
Newfoundland	1989	Experience Rating Assessment Plan	Hospitals, nursing homes and special care homes with total premiums of at least \$3,000 over a 3-year period	prospective	balanced	+20%/-20% of base assessment
	1995	Expanded Experience Rating Plan	All firms in an eligible rate code that have been active for the past 3 years and have paid a minimum of \$3,000 in assessments over those 3 years (an average of \$1,000 per year)	prospective	balanced	maximum of 20% discount or surcharge applied to the base rate
Northwest Territories	1996 implement 1995 'shadow' Year	Safety Incentive & Rate Reduction Program (SIRR)	Employers with a 3-year* average assessment over \$1,000 and more than 2 time-loss claims within the 3-year period*	retrospective	not balanced	special assessment limited to 40% of employer's 3-year average assessment
Nova Scotia		No program				
Ontario	1984	New Experimental Experience Rating (NEER)	All industries except construction	retrospective	balanced overtime	+180/-90% of premium

Table 8.9 Summary of Experience Rating Programs in Canada (Continued)

Jurisdiction	Year (1)	Title	Eligibility	Effect	Balance	Surcharge/ Rebate Spread*
	1989	Workwell Program	All employers except those individually liable	retrospective	not balanced	10-75% of assessment to a maximum of \$100,000
Prince Edward Island	1995	Experience Rating System	Construction sectors with total premiums of at least \$3,000 over a 3-year period	prospective	balanced	+25%/-25% from the base rate
Quebec	1990	Personalized Plan	Employers with min. 2 years with the CSST and min. assessments of \$55,000 over a 3-year period	prospective	balanced	+200%(3)/100% (4) of base assessment
	1990	Retrospective Plan	Employers who qualify for a 100% personalized rate (annual premiums exceed \$440,000 in 1995)	retrospective	not yearly balanced	50%-100%(4) of base assessment
Saskatchewan	1992	Merit/Surcharge Program	Employers active for last 3 years with annual premiums of min. \$25	retrospective	not balanced	up to 25% (max. \$100,000) refund of premium
Yukon	1992	Risk Reduction Program	Employers with annual assessments of at least \$500	retrospective	not balanced	up to 30% rebate and up to 33% of super-assessed +33%/-30%

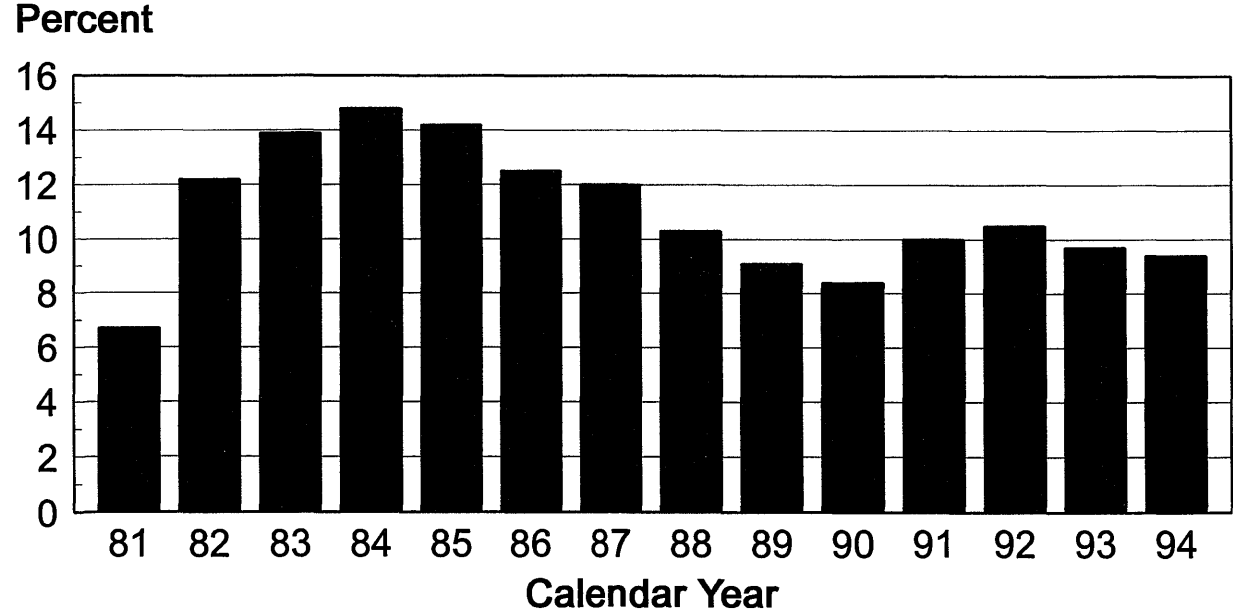
* Surcharge/rebate numbers shown are the maximum. In some jurisdictions, lower figures may apply to smaller firms or particular rating classes

(1) Many WCBs had other experience rating programs or plans operating before those listed. Prince Edward Island had a program in the 1970s and early 1980s
Source: Association of Workers' Compensation Boards of Canada

Figure 8.1 — Employment in British Columbia

Source: Statistics Canada

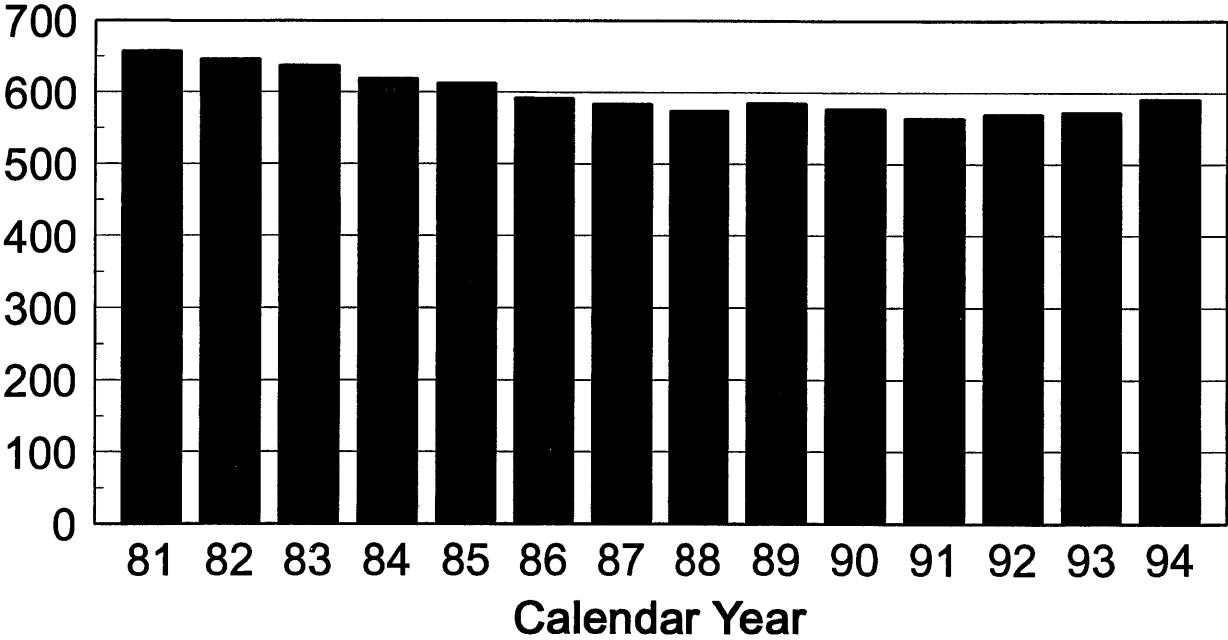
Figure 8.2 — Unemployment in British Columbia



Source: Statistics Canada

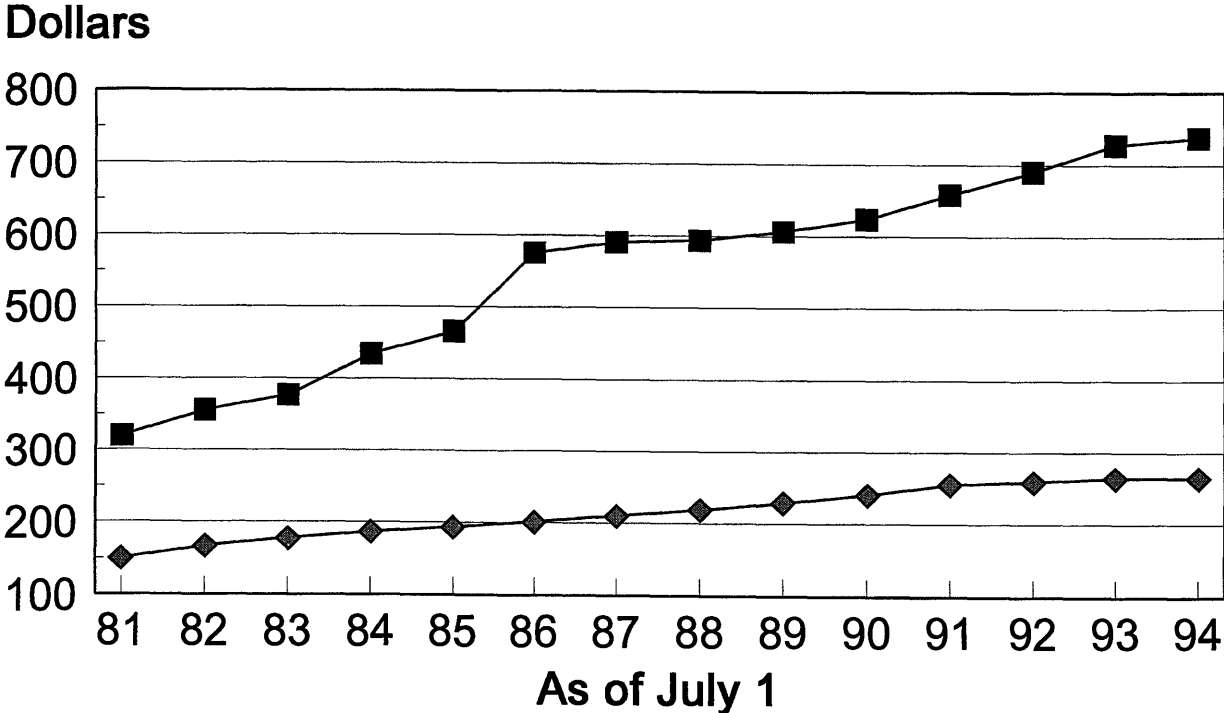
Figure 8.3 – Average Weekly Earnings

Constant Dollars

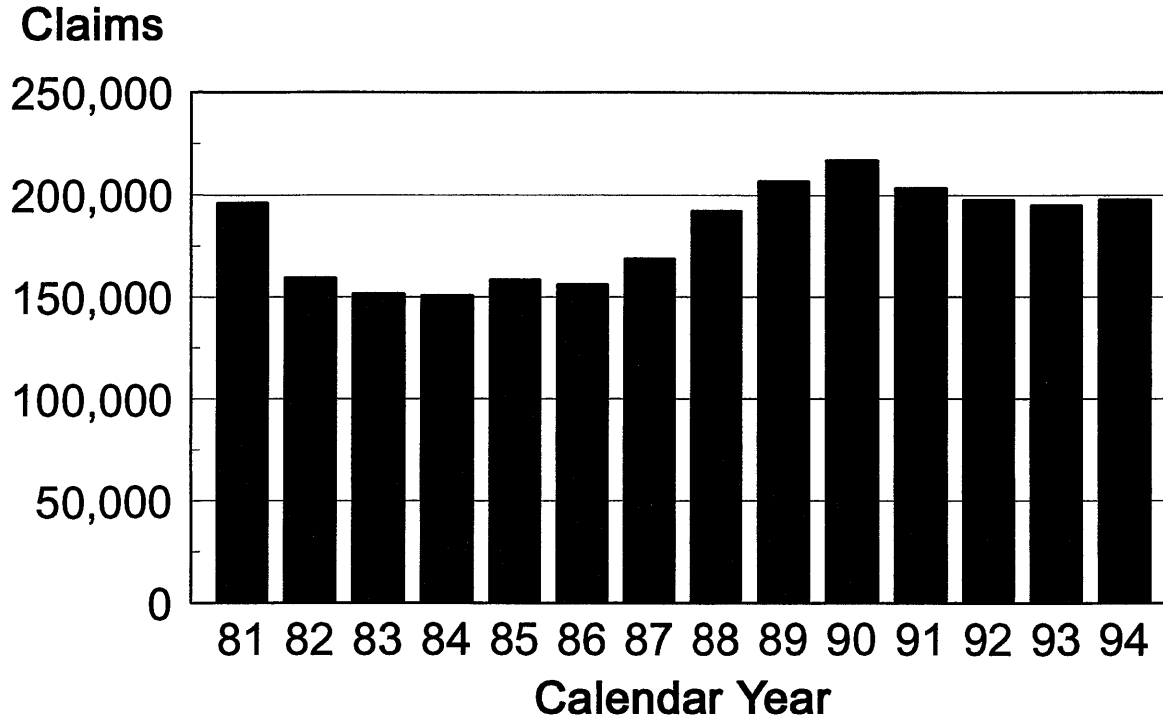


Source: WCB of British Columbia

Figure 8.4 — Maximum/Minimum Weekly Benefits

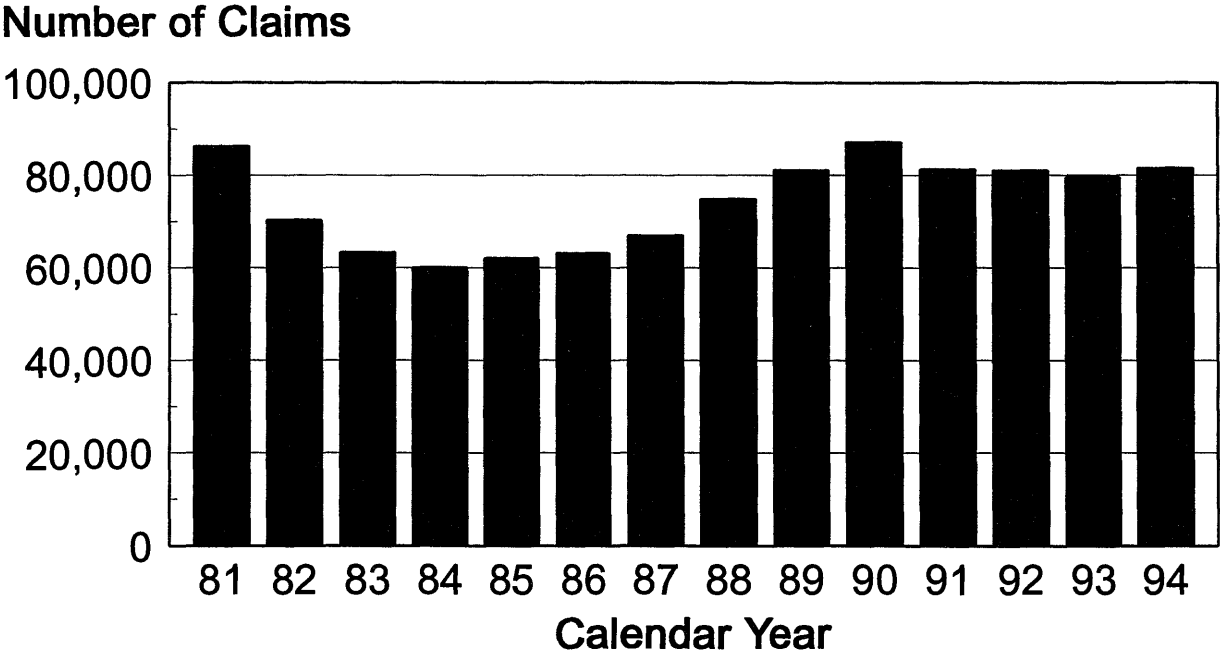


Source: WCB of British Columbia

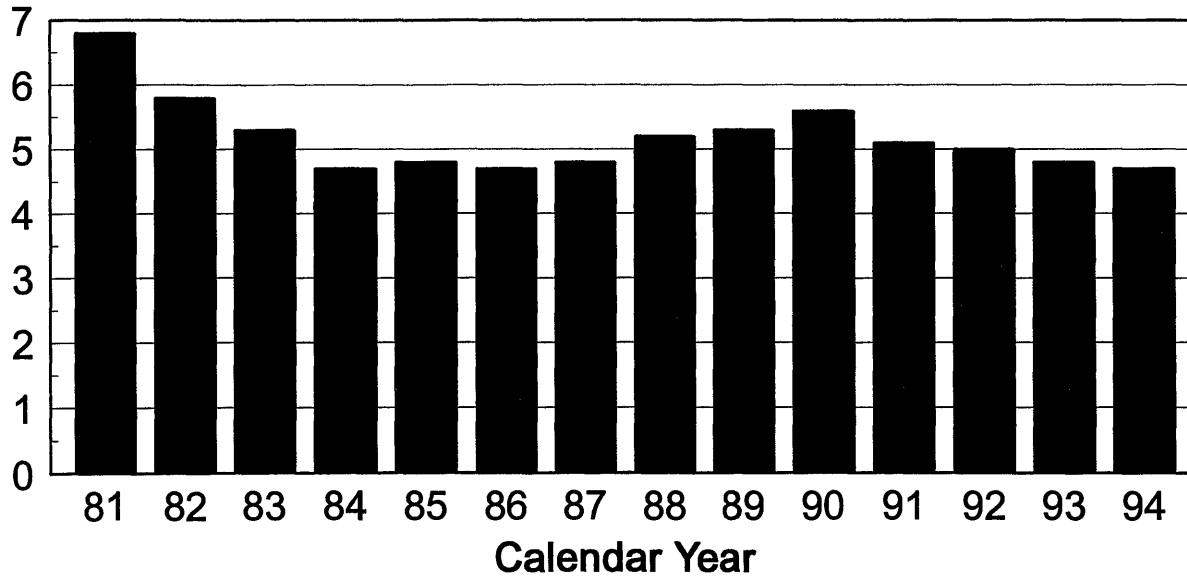
Figure 8.5 — New Claims Registered

Source: WCB of British Columbia

Figure 8.6 — Wage Loss Claims First Paid

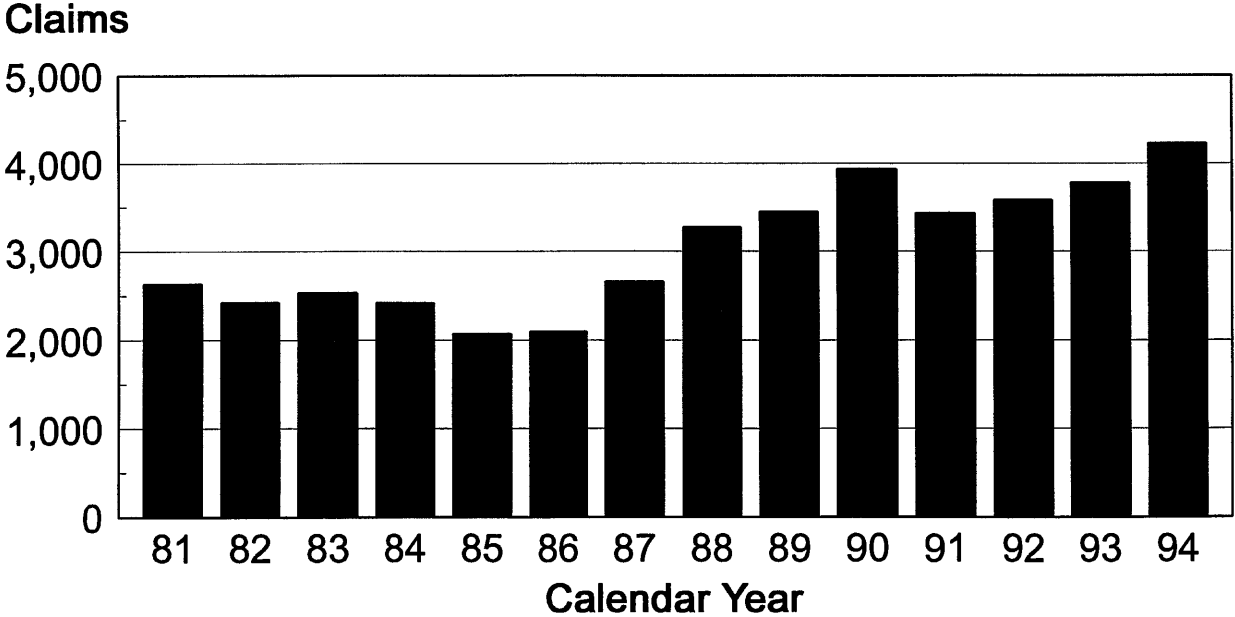


Source: WCB of British Columbia

Figure 8.7 — Incidence of Wage Loss Claims**Initial Wage Loss Claims per 100 Workers**

Source: WCB of British Columbia

Figure 8.8 — Long Term Disability Claims First Paid



Source: WCB of British Columbia

Lost Work Days per 100 Workers

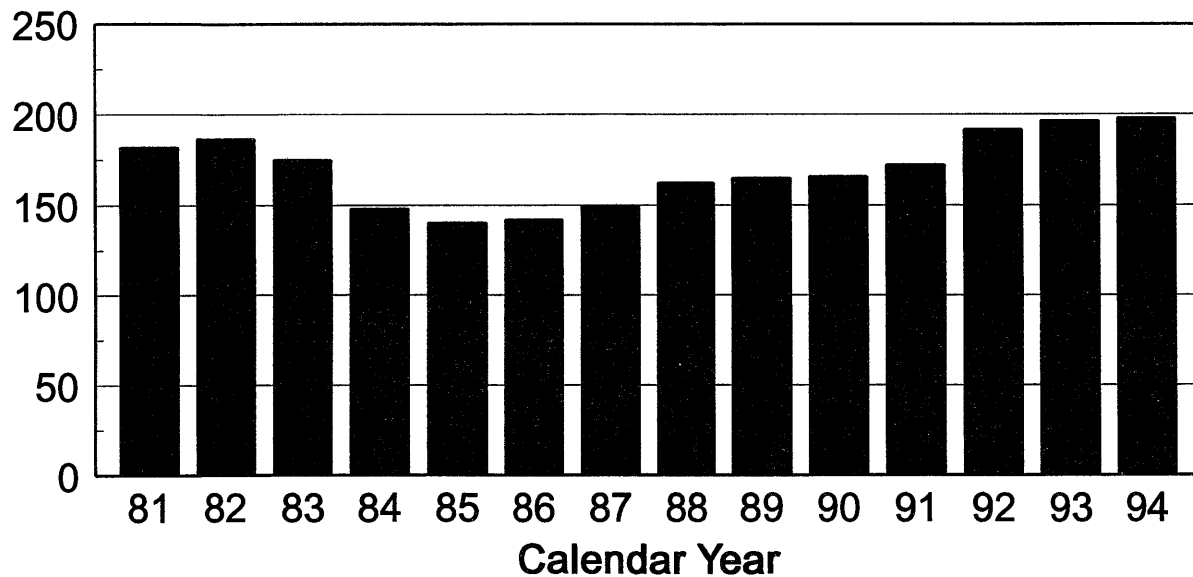
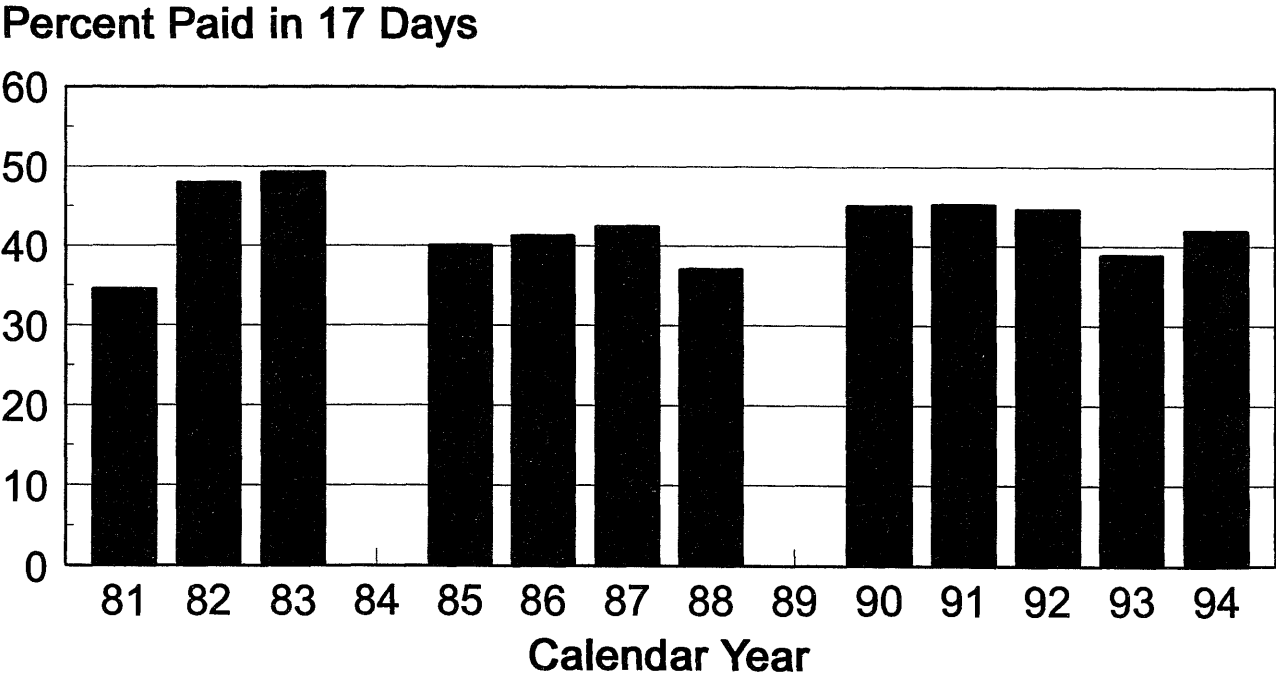
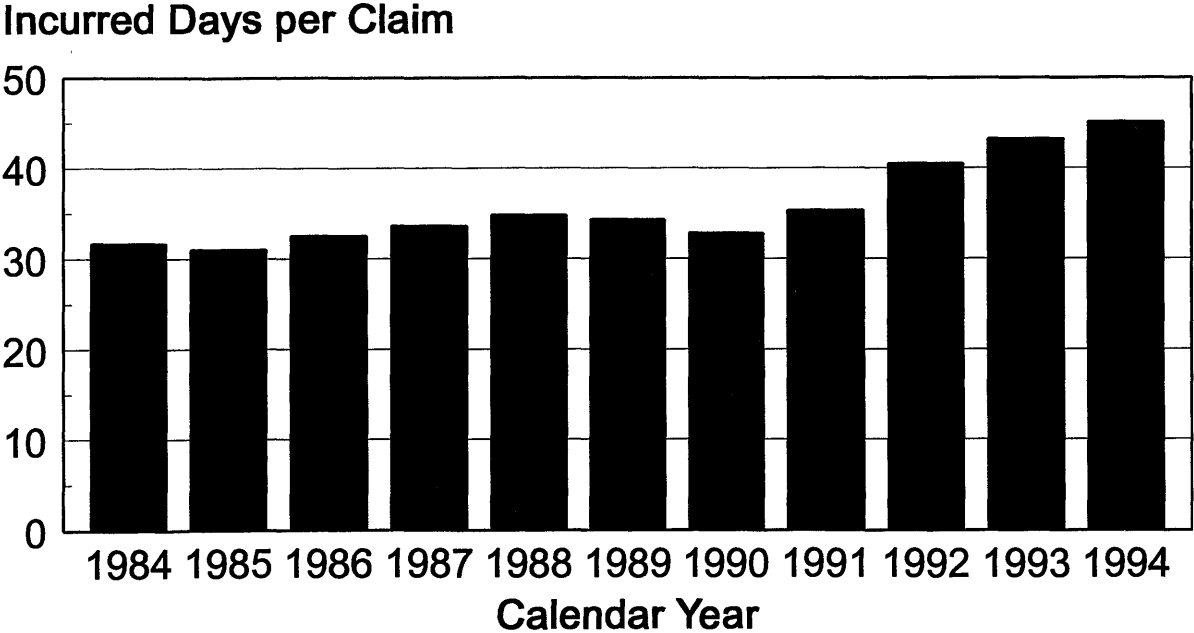


Figure 8.10 — Paylag Performance



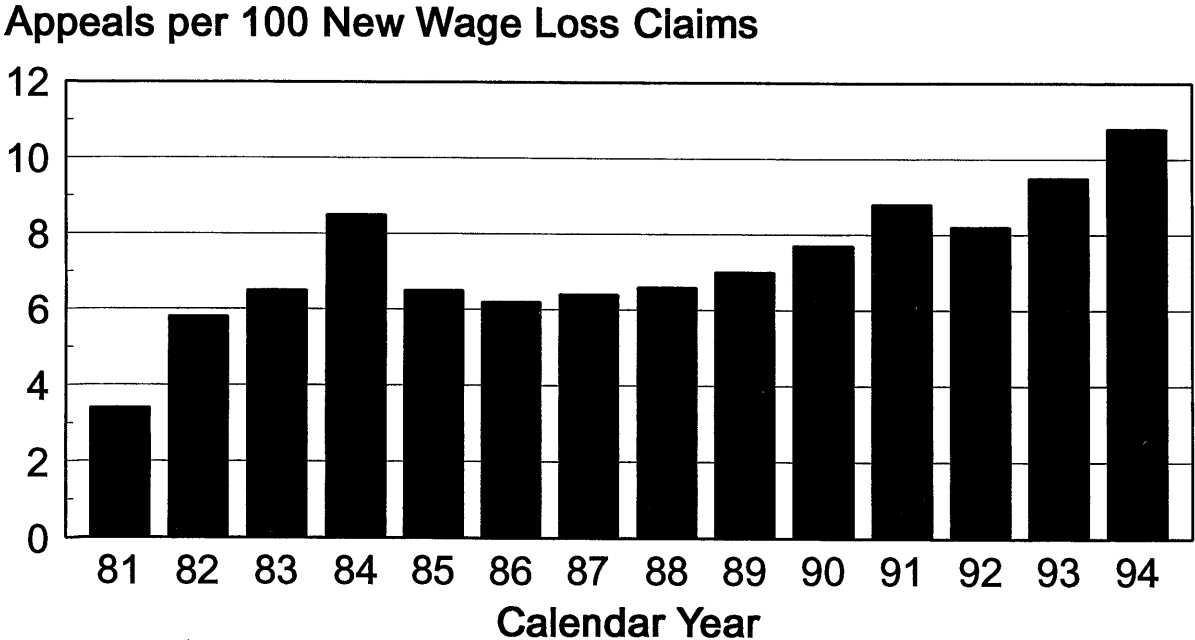
Source: WCB of British Columbia

Figure 8.11 — Average Claim Duration



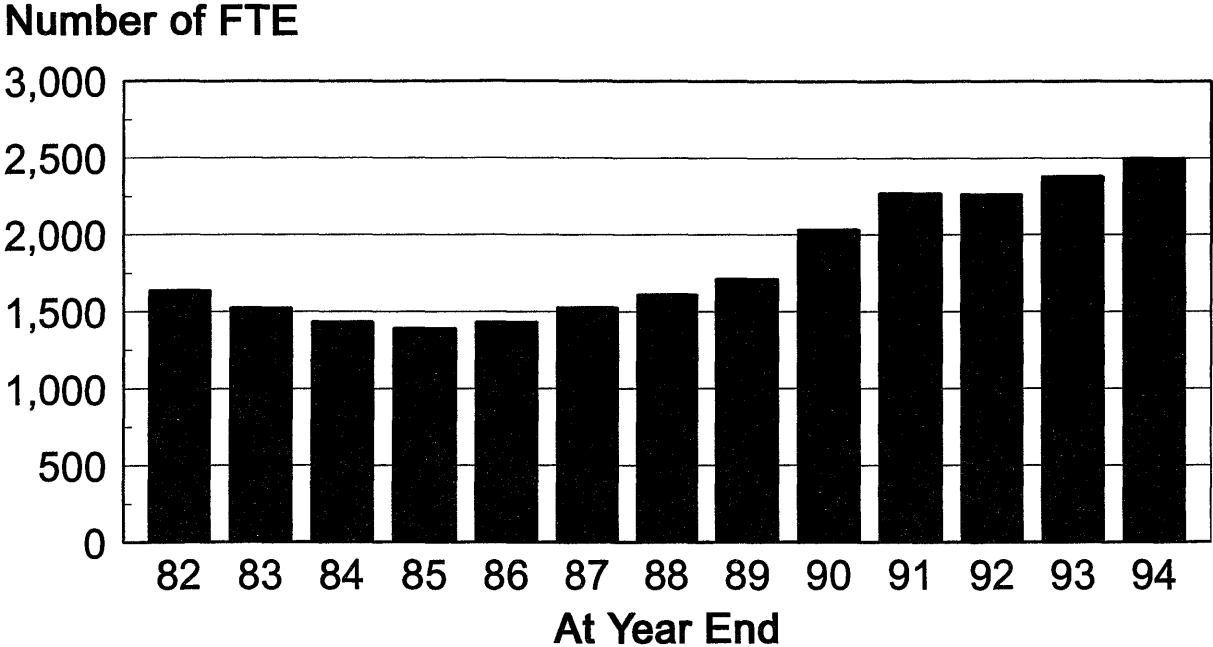
Source: WCB of British Columbia

Figure 8.12 — WCRB Appeals Per 100 Wage Loss Claims



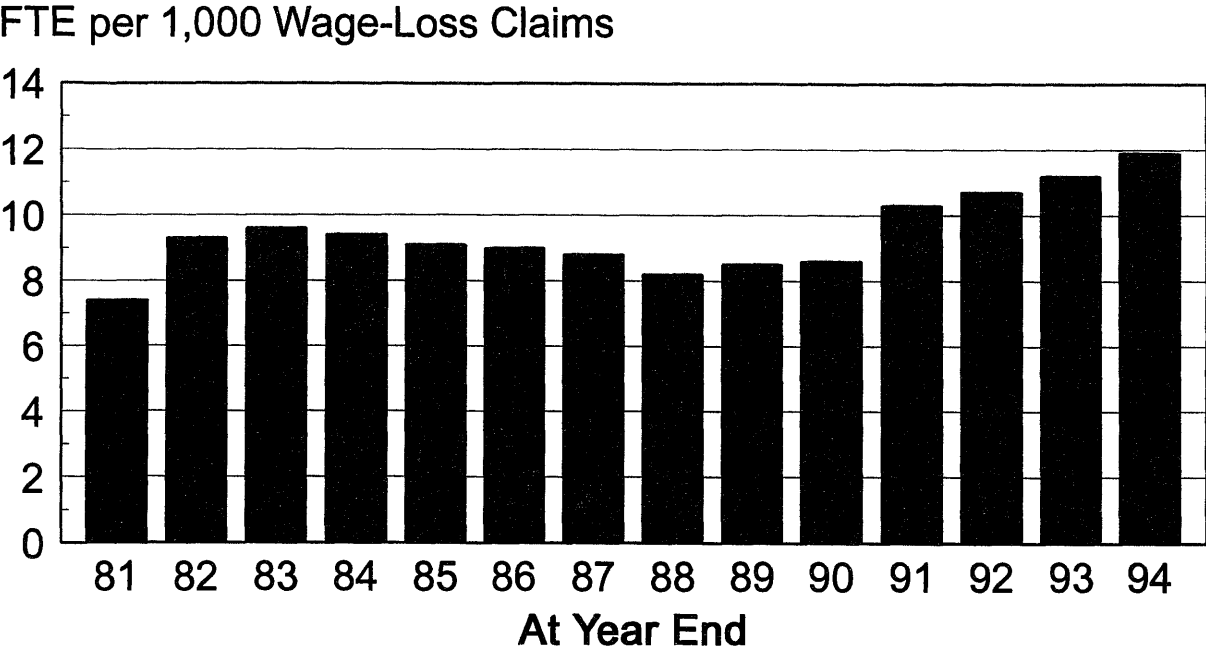
Source: Compiled from WCRB and WCB statistics.

Figure 8.13 — Total WCB Staff



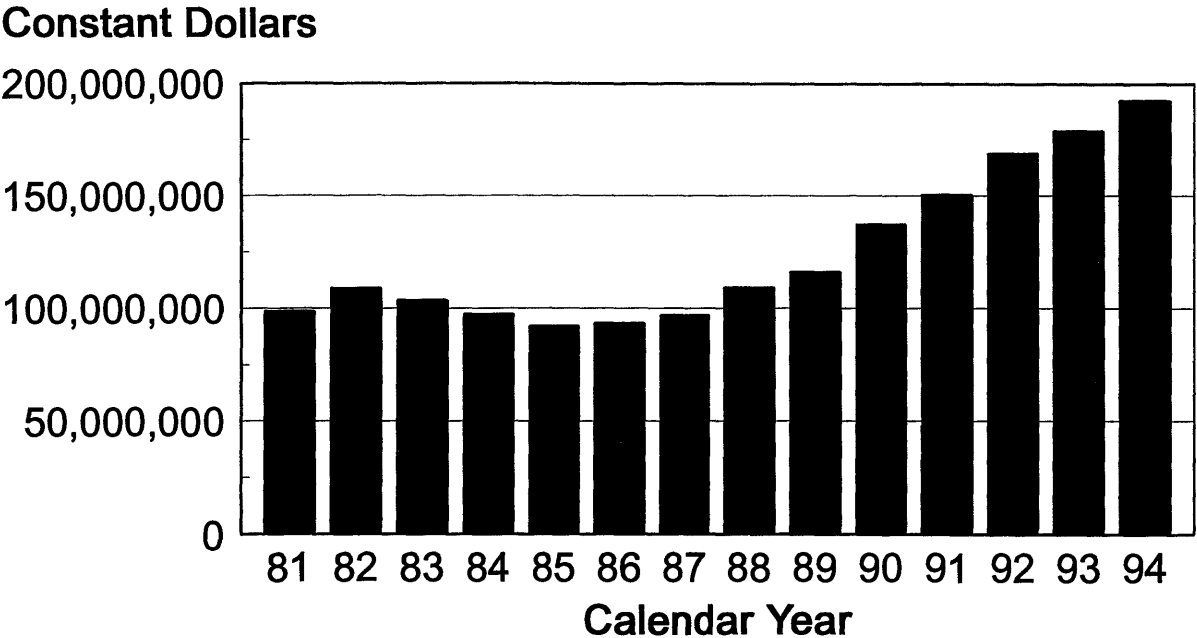
Source: WCB of British Columbia

Figure 8.14 – Compensation Services Staffing



Source: WCB of British Columbia

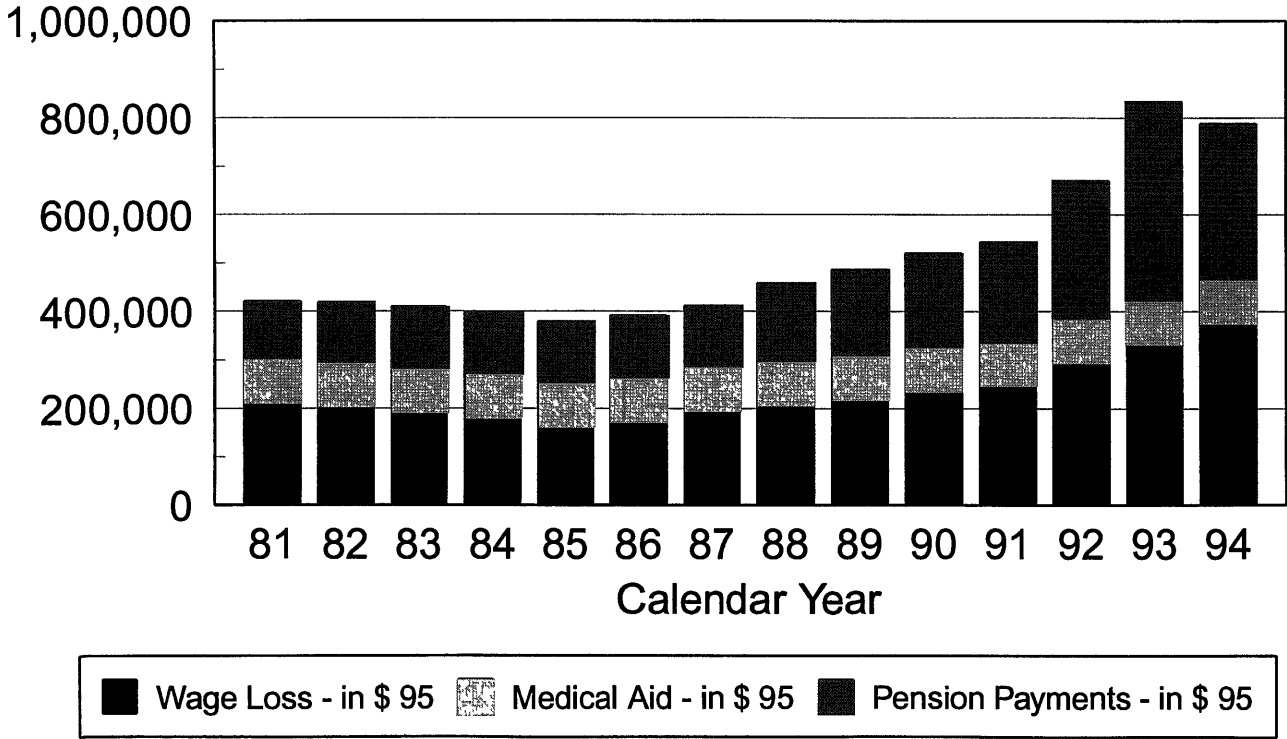
Figure 8.15 – WCB Administrative Cost



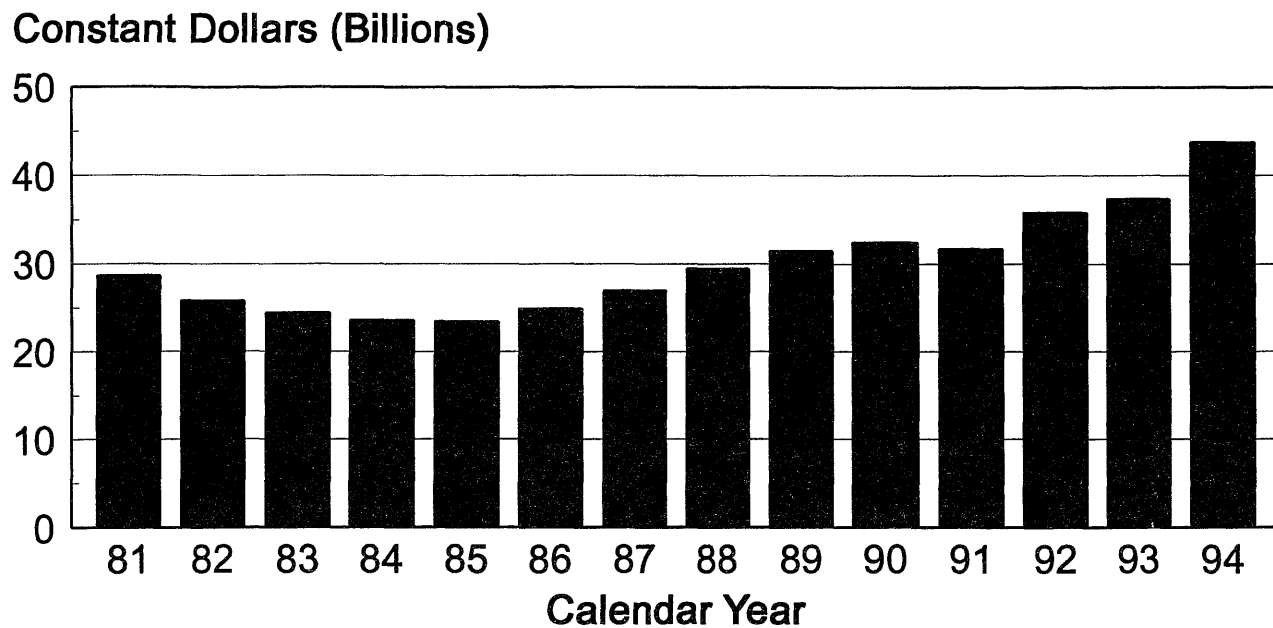
Source: WCB of British Columbia

Figure 8.16 — Annual Accident Fund Payments

Constant Dollars (\$000's)

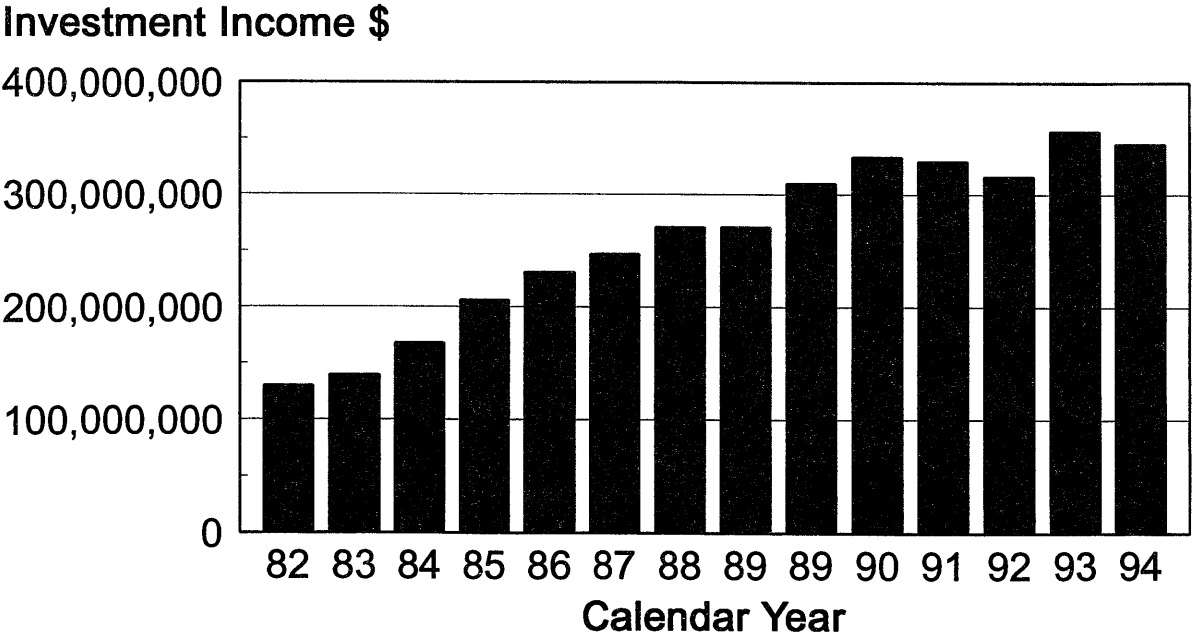


Source: WCB of British Columbia

Figure 8.17 — WCB Assessable Payrolls

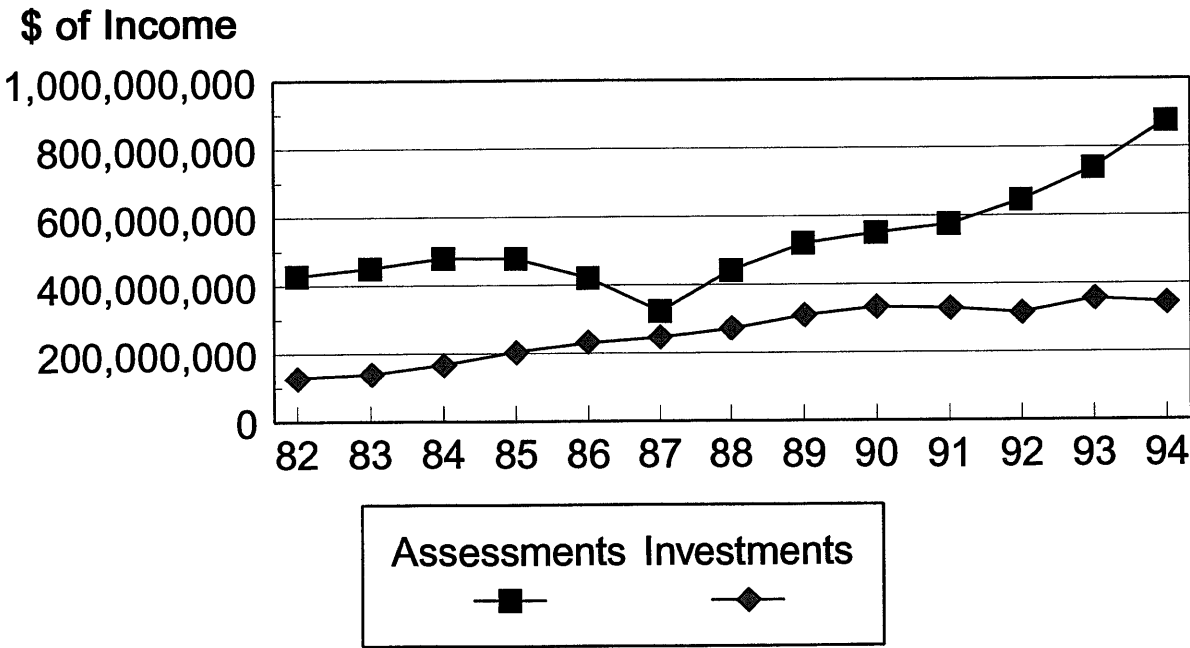
Source: WCB of British Columbia

Figure 8.18 — WCB Annual Investment Income



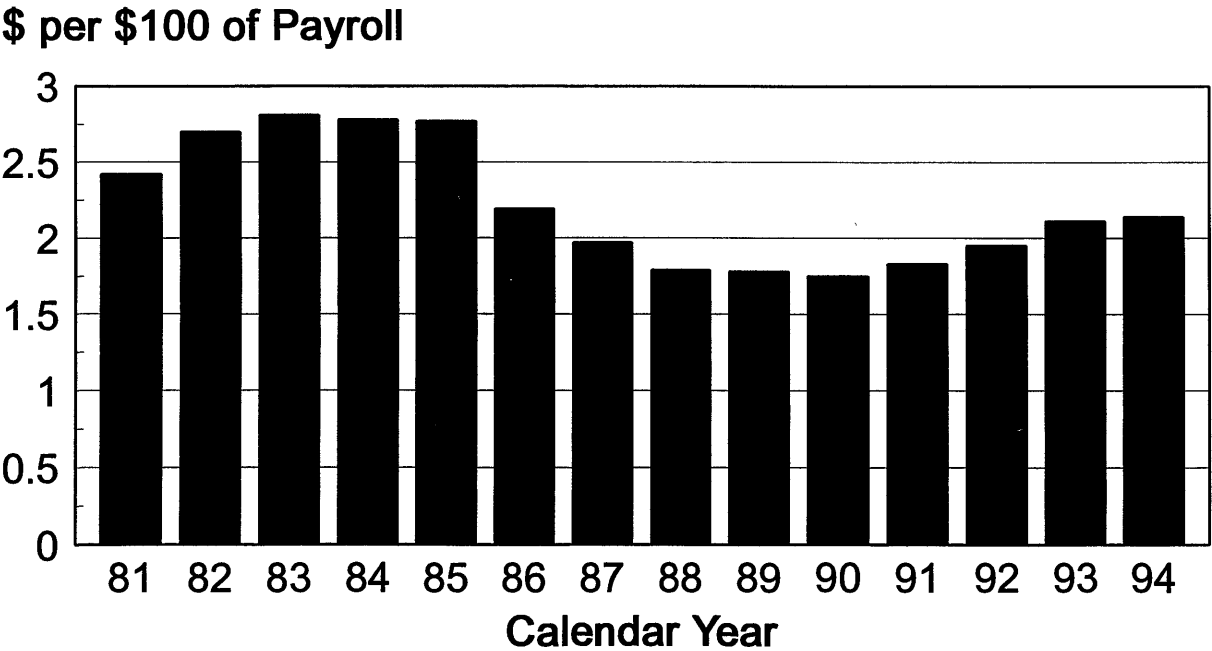
Source: WCB of British Columbia

Figure 8.19 – WCB Assessment and Investment Income



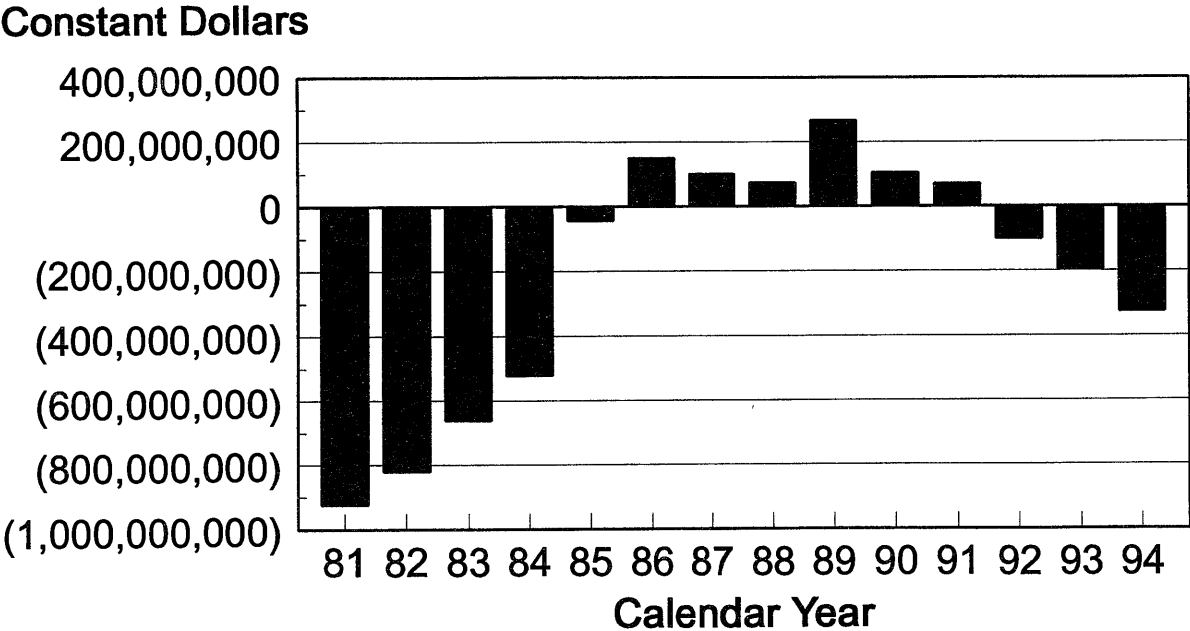
Source: WCB of British Columbia

Figure 8.20 — WCB Average Assessment Rate



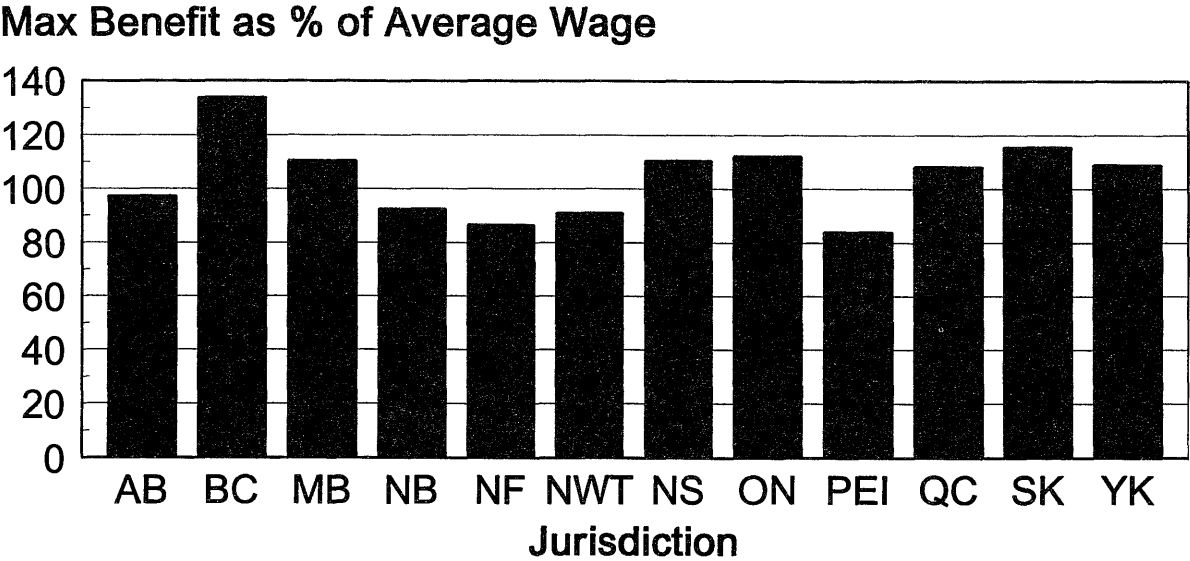
Source: WCB of British Columbia

Figure 8.21 — Accident Fund Balance



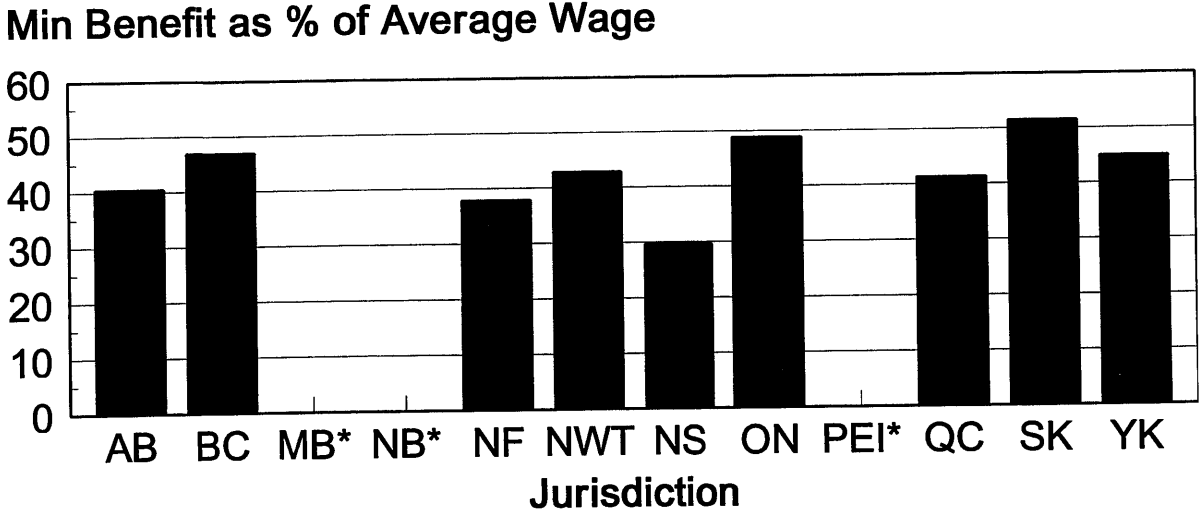
Source: WCB of British Columbia

Figure 8.22 — Maximum Weekly Benefit Relative to Average Wage for Temporary Disability



Source: Association of Workers' Compensation Boards of Canada

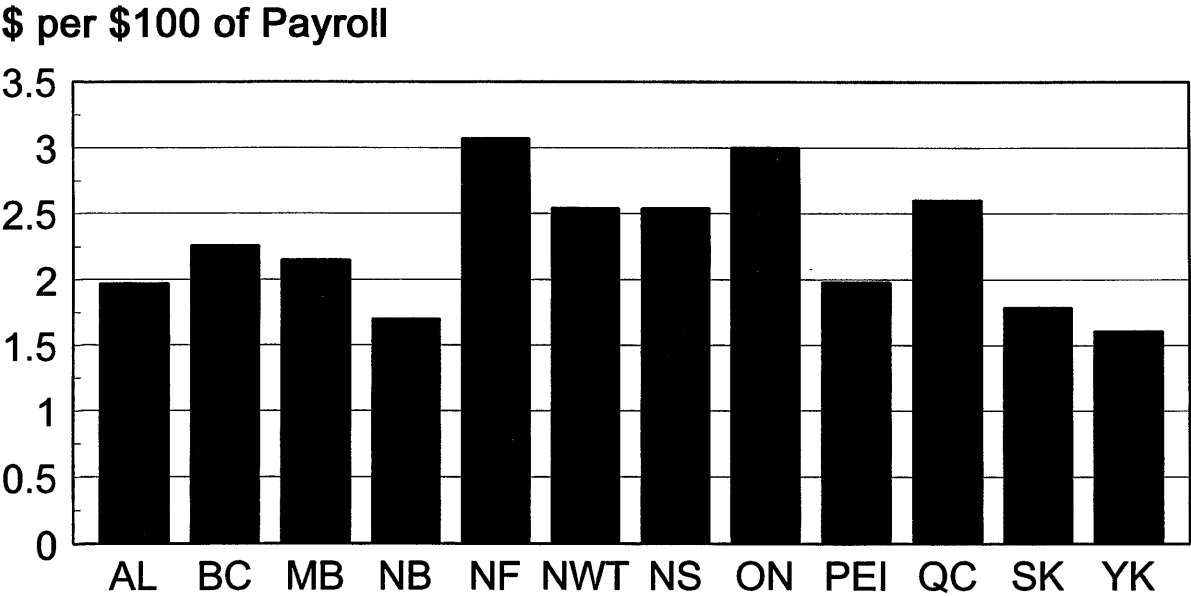
Figure 8.23 — Minimum Weekly Benefit Relative to Average Wage for Temporary Disability



* No minimum benefit.

Source: Association of Workers' Compensation Boards of Canada

Figure 8.24 — Average Assessment Rate - 1995



Source: Association of Workers' Compensation Boards of Canada

Chapter 9

ATTENTION POINTS

As in past administrative inventories, we have taken the liberty to record in this chapter some of our summary observations about the workers' compensation system of British Columbia. In this case, we also take advantage of the perspective that two sets of observations of the system four years apart can provide. As always, we have depended very heavily on what people intimately familiar with the WCB have told us. Our reactions to what we have heard and the judgments that result from the experience we bring to the task are, of course, solely our responsibility.

We hope that the issues we identify for attention here will resonate with decision makers in British Columbia. In most instances, these "attention points" are identified as such because they represent special strengths of the system or because they may warrant, at least in our opinion, additional attention by those who seek to improve the system. We have specifically not made a special attempt to match the attention points from 1991 or 1992 nor to document all the progress, or lack thereof, since 1991. We prefer to think of this as a fresh look at the WCB, informed by the perspectives of the past. For purposes of exposition, we have grouped our observations into the broad categories of: 1) External community relations, 2) Policy and performance issues, 3) Administrative matters, and 4) Appellate issues.

External Community Relations

The WCB of 1995 is vastly more open and responsive than it was four years ago. More information is available and greater access is provided. Still, while a great deal of effort has gone into improving access for stakeholders at the WCB since 1991, the yield has been disappointing. The suspension of the WCB Board of Governors in 1995 is only the most obvious manifestation of this. The employer indifference to WCB matters that we found so remarkable in 1991 is gone, replaced by antipathy that we found very troubling. WCB now operates under the harsh glare of critical publicity. Attitudes of suspicion and distrust are all

too prevalent, particularly between employer groups and worker groups. Neither trusts the motives of the other side when dealing with policy issues. Many times the WCB gets caught in the middle and ends up earning the enmity of both sides.

The Assessment Department provides one contrary example to this gloomy picture of external community relations, as employer suspicions that were rampant in 1992 have been largely dissipated with adequate information and improved access. The Regulatory Advisory Committee (RAC) and the Occupational Disease Standing Committee also provide evidence that cooperation between workers and employers for the good of the system is possible, at least at the technical policy development level. There are other, smaller victories that could be cited. While organized employer groups and the organizations of disabled workers are highly critical of WCB operations, the Office of the Ombudsman seems more positive toward the WCB than four years ago. Unfortunately, the major perception of those outsiders closely involved in the system that we interviewed was “no progress.” Thus, the structural changes of 1991 apparently did not achieve the desired result of giving ownership to the system’s stakeholders, at least not in a way that enabled them to govern jointly.

Moreover, with partisan critics waiting for any opportunity to embarrass the WCB and the current government, it will be even more difficult to address the legitimate policy concerns of the stakeholders. With the current attitudes of the organized employer and labour communities, it will be hard to reach consensus on desirable system changes. However, the WCB must continue to do its job everyday, to struggle with the vitally important task of providing fair and equitable benefits to injured workers in a timely manner and at a reasonable cost.

Policy and Performance Issues

There are a number of system performance issues that will be mentioned here. Some are beyond the reach of the WCB and would require statutory action. Others are a matter of policy implementation that is under the control of the WCB. One underlying theme that characterizes nearly all of these issues is a lack of adequate analysis about causes and consequences. The information generally is available, but it has not been analysed and presented in a way that can contribute to resolving issues. Thus a good deal of our subjective judgment was gone into developing the following list. We will return to this question again under the administrative issues section, when we deal with the critical role of policy-supportive research at the WCB.

Pension Incidence and Cost

Pensions have been growing faster than any other type of claim in the system. While there are many competing explanations for this, none of them can be proven correct. It is imperative to understand the nature of this trend. There are allegations that the functional award levels are not sufficient to compensate adequately for the actual degree of disability; but no information has been presented to demonstrate this in a comparative framework. We share a suspicion that the inadequacy of functional awards may be driving the growth in loss-of-earnings pensions, but we cannot prove this either.

The contributions of secular trends, demographic forces, policy changes, and system performance variables need to be sorted out to establish the causes of the enormous level of growth in LOE pensions. It is difficult to attack the problem in a sensible way without a more adequate understanding of the underlying causes. Because of their long duration, the expenditure and reserve levels of these awards will be a problem for the WCB for many years to come.

In addition, it seems that the delays imposed by the employability assessments and other deliberative processes involved in setting permanent pension benefits routinely create the need for income support to bridge the gap between medical plateau and permanent pension award. A way must be found to speed the determination process in the interest of maintaining the return-to-work possibility.

Medical Care Costs

The alarming growth in medical care costs is a problem throughout North America, but many jurisdictions have moved more rapidly than British Columbia to implement cost control techniques for medical expenditures.¹ Not only has British Columbia come late to the case management model, but there is evidence of perverse incentives in the substantial form fees negotiated by the WCB with the BC Medical Association in 1991. The relationship between subsequent visit form fees and the apparent increase in subsequent visits needs to be examined. Further, the cost implications of this situation go beyond simply the amount of the form fees and potential additional payments for medical treatment, to include possible linkage with the inexplicably rising durations of disability.

¹ See Grannemann (1994) for a discussion of these issues from the U.S. perspective.

Durations of Disability

To date there has been no satisfactory explanation given for the rising durations of disability at the WCB. It may be due to an increasing complexity of adjudication issues, it may be due to the form fees incentive for subsequent medical treatment visits, it may be due to the initial/ongoing adjudication model. In truth, it may be due to all or none of these. The problem is that no one knows, so it is impossible to design an effective strategy to reverse the situation. Since the ultimate purpose of the WCB is to prevent disability, not to encourage it, a much greater priority should be given to understanding the rising duration of disability.

Timeliness

Despite the addition of considerable resources to the Compensation Services Division since 1988 (without a significant increase in initial claims activity) the paylag situation seems to continue to deteriorate. But it is difficult to be sure even of that, due to the utilization of the mean paylag rather than the median. The mean paylag gives too much weight to the complicated cases which have clearly become more numerous. The median paylag would more adequately measure the “typical” WCB performance in adjudicatory efficiency. Even after the all-out mobilization in 1994 to attack the adjudication backlog, timeliness apparently continues to slip and durations continue to increase.

It now seems clear that doing the same old things in the same old ways will not turn this situation around. The new WCB management and existing staff deserve credit for having figured this out some time ago, and they are moving to attack the problem in a number of ways. Still, until concrete, tested and proven solutions are implemented, the problem remains critical to WCB performance as experienced on the street.

Vocational Rehabilitation

There are some bright spots in the vocational rehabilitation area. The comprehensive Rehabilitation Centre in Richmond is one of the jewels in the WCB crown. The Functional Evaluation Unit is unsurpassed in its technical sophistication. The broad array of rehabilitation benefits is outstanding. Rehabilitation performance figures seem only average however. Further, vocational rehabilitation expenditures have exploded at rates that no one can adequately explain. However, the underlying causes are not so difficult to ascertain in this instance.

The lack of leadership for two years and the fundamental lack of consensus about the mission of vocational rehabilitation mean that there is a lot of remedial work to be done. The following actions seem warranted:

- (1) Develop clearer guidelines, expectations, and standards of practice regarding the provision of vocational rehabilitation services within the WCB.
- (2) Increase the level of clinical supervision provided to each consultant through the establishment of lower management to consultant ratios, or the development of lead consultant positions within service delivery locations that would act as a unique clinical resource for consultants requiring assistance with individual cases.
- (3) Implement a professional development focus within the Vocational Rehabilitation Services Department that addresses the continuing educational needs of practising consultants in the field in order to upgrade their knowledge and skills in providing services to injured workers. Also, develop continuing educational programs for new management staff to develop additional management and supervisory competencies.
- (4) Develop and test new models of service delivery (e.g., case management model) that enhance early intervention, attachment to the workforce and return to work outcomes consistent with emerging disability management principles.
- (5) Design a program evaluation system that provides meaningful management information on both process and outcomes related to the delivery of vocational rehabilitation services. Multiple performance indicators or measures need to be developed and longer term follow-up mechanisms should be established.
- (6) Provide the Vocational Rehabilitation Consultant with additional technology and software tools required to provide effective services. For example, consultants should be able to access transferable skills analysis and job matching software among other resources.
- (7) Establish additional resources for the Career Re-direction and Job Search Program, in order to provide a comprehensive array of employment resources for consultants and injured workers. Certain types of data and information could also be made available to consultants through this resource via computer network.
- (8) Develop additional service capacity and referral relationships in the community to address injured worker service delivery needs. This is a more critical issue in the area offices, however guidance in terms of how

relationships are established and monitored would be very helpful. It is recommended that the process utilized by the Rehabilitation Centre in developing, evaluating, and monitoring its referral network throughout the Province be used as a potential model for the Vocational Rehabilitation Services Department.

- (9) Promote research efforts to provide the Department with the kind of information required to appropriately inform future policy and practice. Given the rapid changes in the labour market, demographics and the non-compensable barriers to employment that injured workers often present, there is a critical need to study these complex issues on an ongoing basis.

This is a short-term agenda. Over the longer term the WCB also needs to work to raise the professional preparation of Vocational Rehabilitation Consultants, both by supporting efforts in the community to develop additional educational resources and by raising the job requirements for the individuals hired. The WCB has an opportunity to help define what “world class” rehabilitation will be for the 21st century, but the short-term failures must be corrected immediately.

Disability Management

In the United States, disability management techniques are being used to attack, apparently successfully, both the incidence and the duration of disability. It is true that the financial payoff accrues primarily to private employers and private insurance companies, but the injured worker gets back to making his or her living more rapidly, as well. Ultimately, it appears that this also leads to fewer cases of the self-defeating psychology of learned disability. In British Columbia, the incentives for disability management are very much attenuated. Private employers do not have any real incentive to reduce durations of cases that will run over 2 years in length. The WCB has the incentive, but because of the inefficiencies of linear processing, attends to the situation far too late in most cases to make a significant impact on recovery and return to work possibilities. The WCB needs to develop mechanisms to actively manage disability for the benefit of the injured worker *and* his/her employer. Only in this way can the true cost of disability be minimized for the benefit of the entire society.

Benefit Adequacy and Equity

There has been no general review of the adequacy and equity of the workers' compensation benefit structure in British Columbia. Maximum benefits are among the best in North America, and this is a record to be proud of. But no one

knows how injured workers at different earning levels and in varying family situations are faring. Since most other Canadian jurisdictions have gone to net earnings replacement formulas for basic income maintenance benefits, it seems important to review this policy area. The issue of benefit coordination or “stacking” is also relevant here. A simple comparison of how injured workers in various situations are compensated, particularly as compared to other Canadian jurisdictions, might be very enlightening. A generous maximum benefit is not enough, benefits should be both equitable and efficient across the entire injured worker population.

Classification Issues For Rate-Making

The recent furor over reorganization of class 621, Retail Stores provides an object lesson in the damage an inappropriate classification structure for rate-making can do. The fact that one identifiable group of employers was responsible for virtually all the sub-class deficit is a clear demonstration that there was something wrong with the sub-class. Further, the combination of limited experience rating and annual swing limits at the sub-class level prevented the system from being able to correct itself. Reclassifying more frequently and in smaller pieces is much less painful than all at once. There are probably several other sub-classes that have similar, though smaller, problems. Further, the new program of round table discussions with “troubled” industries that has been implemented by the WCB should surface these problems earlier and in a more appropriate environment. However, it would also be appropriate for the WCB to increase its vigilance for sub-class problems and for classification inequities, in the long-term interest of the perceived fairness of the system. The fact that 17 sub-classes are in deficit, and 10 sub-classes are in surplus by more than one years’ assessment revenues should motivate a re-examination of sub-class structure.

Experience Rating

Experience rating continues to be a controversial subject in British Columbia. This is true despite the near universal endorsement of the concept of experience rating by the employer community. It is controversial because organized labour remains adamantly opposed to the concept. Some believe that the awakening of employer interest in the WCB since 1991 is due primarily to the imposition of the ERA experience rating program from 1986 through 1988. Whether that is true or not, experience rating plans are motivated by belief in the ability of employers to manage their workplaces, and belief that monetary

incentives can be designed to reinforce socially appropriate actions by employers. Canadian jurisdictions differ more on experience rating arrangements than on most other dimensions of their workers' compensation systems. This no doubt reflects the political realities of each province. However, it is troubling that energy still goes into fighting the concept of experience rating in British Columbia, as opposed to designing a more effective program. Perhaps the new WCB study of the ERA program currently underway will promote a more productive dialogue about the policy design issues of experience rating, it is overdue.

Financial Performance

While the size of the unfunded liability is a source of criticism by stakeholders, in fact the performance of the WCB over the last decade has been very good. The investment returns from the nearly fully reserved future obligations have contributed substantially to this record. There is always a tension between benefits for workers and costs for employers in workers' compensation systems. Achieving a balance between these two opposing objectives is difficult. The combination of generous benefits at reasonable costs has been pursued very responsibly in our opinion. British Columbia is among the very best systems in North America for both injured workers and their employers.

Administrative Issues

In addition to the policy and performance issues above, there are a number of observations that relate to administrative issues. We offer these primarily for consideration by WCB management.

Administrative Cost Control

The WCB has compiled a very uneven record in controlling administrative costs. During the contraction of the mid 1980s, administrative costs were probably too tightly controlled. The result was a rebound that began well before the implementation of the new governance structure in 1991. Now the WCB has entered a period of stringent cost control again. This cyclical pattern is unfortunate and ultimately counter-productive. But the annual budgeting and strategic planning process that has been introduced over the past two years at the WCB should make a major contribution by providing the predictability to resolve the stop-go method of funding. This has been long overdue and the WCB deserves credit for this substantial improvement.

The staffing growth in the Compensation Services Division over the last several years cannot be demonstrated to have resulted in significant performance gains in the adjudication or management of claims. There are a number of new initiatives designed to remedy the situation. The idea of using one SDL as a “test site” for new claims adjudication and management techniques is excellent. It should serve to effectively prove out concepts before widespread implementation. In addition, if it can be structured appropriately to enable and empower SDL staff, it will elicit new, even more productive ideas. The promise of the new initiatives in the Division is great, but past performance must temper our enthusiasm for these changes. The Transition Project was also launched with great expectations in the Division and it ended as a costly and demoralizing failure. The entire SDS effort needs to be carefully managed and nurtured as a critical part of the WCB’s long-term commitment to customer service and value, as well as employee satisfaction and productivity.

Staff Development

The WCB has a tremendous reservoir of talent among its staff. Unfortunately, that talent is neither encouraged nor consciously developed as a regular part of doing business at the WCB. Staff development seems to be treated as an add-on; but service-oriented businesses cannot afford to put staff development last on the priority list. The closing of the TEC was just the most obvious manifestation of a failure in the commitment to adequately develop staff talent and creativity. The WCB management needs to empower their employees, since they are the ones with the potential to make the WCB a better organization. Admittedly, this is a different style of leadership than has characterized the WCB in the past. However, we believe it is the key to better performance at lower cost in the long run.

Policy Guidance

The WCB is long on rules and handbooks and short on general policy guidance. But it must be pointed out that concentrating on writing procedures down and “doing it by the book” is a conscious organizational choice. The alternative is to train employees carefully in the goals and objectives of the organization, and then empower them to get the job done. There is a risk of inconsistency of course, but there is also the chance of making real breakthroughs in procedure. As business process reengineering spreads through the WCB, management needs to trust the intelligence and good will of the employees, sometimes in

place of management prerogatives. This will be a difficult cultural change, particularly for middle managers. But it offers the potential for the WCB to move beyond its current organizational limitations.

Collective Bargaining Relationship

It is often said that employers get the unions they deserve. Whether that is true in this case or not, there is a great deal of improvement possible in the relationship between the WCB and the CEU. The past tradition of “us vs. them” at the WCB has been challenged by the New Directions team within the Assessments Department. It needs to be challenged in other venues as well. If the WCB is going to become a high-performance organization, the collective bargaining relationship will need to become a more cooperative, mutual relationship that focuses on final organizational outcomes rather than narrow self-interest. The potential seems to be there, but there is a lot of baggage from the past that needs to be discarded by both sides. This needs to become a major internal priority for both union and management leaders at the WCB in the next few years.

SDL Issues

The reorganization of the SDL's in 1993 seems to have been a positive thing, despite the adjudication crisis that it spawned. We supported a more decentralized organization of the WCB in our 1991 administrative inventory, based largely on functional comparisons between area offices and the Richmond adjudication units. In addition, we support the queuing model for claims assignment within the SDLs. While there may need to be some standards developed for individual performance levels, it is important to reduce the time pressure on adjudicator decisions, both for the sake of employee job satisfaction and for improved decision making. This appears to be a significant area of WCB improvement since 1991, according to our interviews. However, just informing injured workers that there will be delays is not sufficient. Resources must be made available so SDL Managers have the means to attack adjudication delays. This completes the connection between internal WCB concerns and service to WCB customers.

We are not so enamoured of the initial/ongoing adjudication model. The adjudicators also are divided over the advisability of this innovation. The obvious problem with creating another point of hand-off between initial and ongoing adjudicators, is that no case management is occurring during the time when the case is waiting to surface on the second adjudicators desk. This “linear case processing” is already a major problem at the WCB, which will be attacked with

the e-file program. But, the initial/ongoing adjudication model adds yet another source of delay that gets in the way of early intervention for maximum recovery potential. In addition, the encouragement of quick decisions by initial adjudicators clearly creates a subtle bias in favour of granting benefits. No one will complain if the initial adjudicator just says yes, but eventually some one will have to deal with the expectations that have been created. This practice issue needs to be reviewed in conjunction with an improved focus on return-to-work as the favoured outcome whenever that is feasible.

The role of SDL management has emerged as a new problem since 1991. The combination of the CEU contract provisions, the adjudication emergency, and budget stringency reduced the scope for manager action. Performance reviews have not been done on individual employees for some time. Managers have a lack of enthusiasm for performing them, since there are no rewards or punishments available to reinforce the results. The queuing system of assigning cases to individual adjudicators takes the backlog burden off their desks, but deposits it on the desk of the SDL manager. This is appropriate, but the manager must then be given the resources and flexibility to respond to this situation.

Lastly, we continue to question the value of manager reviews. No doubt there are some situations where they are productive, but the bulk of opinion we heard, both inside and outside the WCB, is that they do not serve any useful purpose as an appeal from the original decision. With the manifold other appeal avenues available to WCB claimants, and the increasing burden on SDL management, we do not feel they are worth the effort.

System Support

The WCB has sometimes struggled with its internal services. ISD particularly is the subject of internal resentment; virtually no one at the WCB feels they are getting their “fair share” of computing resources or support. Now, under new leadership, it appears that ISD is becoming more customer oriented. The “market oriented” philosophy of the Division promises a more efficient allocation of resources. These are healthy changes that have the potential to ensure that support services actually serve the ultimate mission more effectively.

Research

In 1991, we urged the WCB to recognize the need for research and evaluation in policy development. The addition of an evaluation component to the Internal Audit Department was a significant step in the right direction. Internal Audit and Evaluation is to be commended for what they have taken on, but there is a

need for a deeper level of policy-supportive research and quantitative analysis. There is still no unit at the WCB that is asking the critical policy questions, the “why” questions, and then gathering the information and doing the analysis required to answer those questions. We believe that this is a major deficit. This has been demonstrated with most of the issues that have been discussed thus far in this chapter.

The development of a Policy Bureau to serve these needs is under discussion. We urge the establishment of such a unit with both an external and internal mission. Externally, the WCB needs to build credibility with stakeholder interests and with governmental authority. Over time, this can be done only if the WCB becomes the source of truthful, authoritative analysis that informs stakeholder opinion. Internally, the WCB is in desperate need of the analytical capacity to explain its own performance. Ultimately the WCB cannot take control of its destiny unless it can define its own problem areas and ways to resolve them. Without an effective policy research function, the WCB is dependent on others to define its failures.

Appellate Issues

There are a number of issues that arise when considering the appellate process in British Columbia. We will concentrate on those that pertain to the WCB and abstain from making recommendations about other organizations.

Medical Review Panels

The MRP process has been addressed in a separate study by the WCB.² However, it seems to still be in distress. The delays in securing an MRP decision are unacceptable. Recent changes to the process initiated by the WCB promise substantial relief, but this situation must be continually monitored. The utilization of MRPs seems to be growing as well, so it is important to ensure that a new acceptable equilibrium is reached after the backlog is cleared out. Also, the high rate of reversals of medical decisions at the MRP needs explanation. Does this indicate a difference of standards, insufficient information, or the imperfect state of medical knowledge? Again, more analysis of the problem is needed to support design of effective solutions.

Relations with Review Board

Relations between the WCB and the Workers' Compensation Review Board seem to have substantially improved from the situation in 1991. While the adjudicatory demands on the Review Board continue to spiral upward, bureaucratic fighting with the WCB does not provide a further drain on resources any longer. The virtual elimination of "reconsiderations" of WCRB decisions by the WCB has obviously been very important. The Appeal Division treatment of the WCRB as a separate, independent appellate body also seems to have helped.

While litigious attitudes appear to be growing very rapidly in British Columbia, it is still a plus that extensive involvement by lawyers has been avoided. The offices of the Employers' Adviser and the Workers' Adviser seem to be meeting the needs of their constituents without resorting to the more expensive and time consuming private lawyer representation used in the United States.

Appeal Division

The Appeal Division has become very controversial, particularly among employer groups in the province. In a way this was inevitable. Moving these sensitive decisions from the private offices of WCB Commissioners to the more open, accessible venue of the Appeal Division was bound to cause more attention to be focussed on them. However, the degree of animosity is surprising, particularly that aimed at the Chief Appeal Commissioner. The Appeal Division has been well run; it may be the best in North America in terms of the timeliness of reasoned, written appellate decisions. The fact that court reviews have been so rare and so unsuccessful, also argues that the Appeal Division is doing its job. Yet, allegations of biased decisions continue to be heard. The issue of whether the Appeal Division is making policy is also raised by employer interests.

The confidence of all stakeholder interests in the fairness and impartiality of Appeal Division decisions is vitally necessary. Our opinion is that the Chief Appeal Commissioner has become a symbol of the deep divisions between worker and employer points of view, sort of a lightning rod for the policy disagreements that currently characterize the British Columbia system. Thus, employers assign responsibility for decisions they do not like to the Chief Appeal Commissioner and her alleged pro-worker bias.

It is apparent that the question of the independence of the Appeal Division was not adequately settled in the drafting of Bill 27, nor by the Munroe Commission report that preceded it. The debate over whether the Chief Appeal

Commissioner is an independent, external reviewer, or a part of the top management of the WCB, obliged to enforce WCB policy as she interprets it, continues to this day. Employer distrust of the individual selected as Chief Appeal Commissioner in 1991 has contributed to the acrimony of the debate.

Ultimately, it may be beyond the capacity of the WCB Board of Governors, or its replacement, to resolve the issue of whether the structural relationship between the WCB and the Appeal Division, as it exists today, is appropriate. It may require legislative resolution at this point. But the WCB must get beyond this critical structural issue, if it is to re-enlist stakeholder participation and mobilize resources to attack the other problem areas in its mission.

Conclusion

The reason given for the suspension of the Board of Governors in July 1995 was that they could not put aside their narrow interest group identity to make decisions that were in the broader public interest. The gridlock that resulted from a collective bargaining approach to policy making will not disappear overnight. But it may create the opportunity for a more pro-active WCB role that seeks to define and resolve policy issues through leadership and analysis, rather than interest group bargaining. We believe it is time for the WCB to finally shed its paymaster tradition and develop a more analytical approach to the mission. We sincerely hope that our suggestions will be helpful as the WCB goes through this intense period of recovery and renewal.

² Jenkins (1992).

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APPENDIX

Table A-1 WCB Statistics, 1981-94

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
GENERAL COMPARISONS											
AVERAGE EMPLOYMENT IN BC	1,339,000	1,268,000	1,258,000	1,266,000	1,297,000	1,354,000	1,390,000	1,444,000	1,524,000	1,561,000	1,585,000
UNEMPLOYMENT RATE IN BC	6 7%	12.2%	13.9%	14 8%	14.2%	12 5%	12 0%	10.3%	9.1%	8 4%	10 0%
CPI ADJUSTMENT FACTOR	0 812	0 627	0.526	0.454	0 4	0 348	0.29	0 24	0 186	0 13	0 063
AVERAGE WEEKLY EARNINGS	\$362.93	\$397.17	\$417.60	\$425.81	\$437.54	\$439.39	\$453.00	\$463.32	\$493.72	\$511.06	\$530.86
MAXIMUM WEEKLY BENEFIT - JULY	\$319.32	\$355.28	\$376.59	\$434.38	\$466.02	\$575.34	\$591.17	\$594.04	\$606.98	\$624.25	\$658.77
MINIMUM WEEKLY BENEFIT - JULY	\$149.83	\$166.81	\$177.90	\$186.65	\$193.87	\$201.40	\$210.47	\$218.92	\$228.91	\$240.28	\$255.34
NUMBER OF CLAIMS											
NEW CLAIMS REGISTERED AT WCB	196,470	159,739	151,815	150,919	158,673	156,312	169,059	192,515	207,019	217,152	203,740
WAGE LOSS CLAIMS FIRST PAID - BC	86,264	70,255	63,291	60,044	62,052	63,066	66,869	74,815	81,046	87,147	81,236
CLAIMS FIRST PAID BY TYPE											
Health Care Only Claims	74,955	62,886	56,413	55,314	57,880	57,630	59,610	72,703	72,499	78,760	68,614
Temporary Total Claims	83,436	67,655	60,612	57,491	59,855	60,851	64,073	71,381	77,425	83,044	77,664
Permanent Disability Claims	2,631	2,424	2,531	2,419	2,071	2,095	2,656	3,272	3,446	3,935	3,431
Fatal Claims	197	176	148	134	126	120	140	162	175	168	141
TOTAL	161,219	133,141	119,704	115,358	119,932	120,696	126,479	147,518	153,545	165,907	149,850
CLAIM COSTS CHARGED BY TYPE											
Health Care Only Claims (000)	\$4,938	\$6,527	\$6,739	\$6,834	\$7,249	\$8,185	\$10,013	\$13,283	\$13,523	\$15,817	\$18,405
Temporary Total Claims (000)	\$150,466	\$161,437	\$158,678	\$150,565	\$150,032	\$163,117	\$180,793	\$206,219	\$224,616	\$250,167	\$271,849
Permanent Disability Claims (000)	\$101,520	\$101,252	\$105,654	\$96,363	\$80,789	\$78,366	\$102,437	\$156,318	\$159,407	\$193,846	\$194,684
Fatal Claims (000)	\$15,887	\$19,453	\$16,303	\$16,594	\$13,382	\$17,313	\$19,369	\$23,804	\$24,260	\$24,927	\$25,312
TOTAL	\$272,811	\$288,669	\$287,374	\$270,356	\$251,452	\$266,981	\$312,612	\$399,624	\$421,806	\$484,757	\$510,250
TOTAL WCB STAFF	N/A	1,638	1,524	1,435	1,391	1,433	1,528	1,611	1,711	2,034	2,270
COMPENSATION SERVICES STAFF	640	654	606	567	563	567	588	616	687	747	837
Comp Services Staff/1000 WageLoss Claims	7.4	9.3	9.6	9.4	9.1	9.0	8.8	8.2	8.5	8.6	10.3
COMP ADJUDICATORS (CA + CO)	163	165	164	144	138	143	146	164	167	191	201
VOC REHAB CONSULTANTS	50	52	51	47	41	44	47	58	56	68	81
COMPENSATION SERVICES COST (000)	N/A	N/A	N/A	\$21,394	\$19,162	\$19,666	\$24,767	\$28,591	\$30,951	\$37,291	\$45,011
WCB ADMINISTRATIVE COST (000)	\$54,563	\$66,908	\$67,866	\$67,007	\$65,858	\$69,289	\$75,153	\$88,033	\$97,863	\$121,461	\$141,625
NUMBER OF EMPLOYERS	81222	77,534	82,723	85,155	86,940	89,808	94,074	98,523	103,515	106,088	109,106
MAXIMUM WAGE RATE	\$22,200	\$24,700	\$26,182	\$26,182	\$26,182	\$30,000	\$35,000	\$41,300	\$42,200	\$43,400	\$45,800
ASSESSABLE PAYROLLS (\$000,000)	\$15,841,437	\$15,876,180	\$16,015,697	\$16,244,122	\$16,763,702	\$18,481,382	\$20,911,936	\$23,754,599	\$26,531,070	\$28,676,237	\$29,825,000
ASSESSMENTS (\$000)	\$383,520	\$427,812	\$450,158	\$480,053	\$478,219	\$421,339	\$323,364	\$441,951	\$520,737	\$551,028	\$575,572
AVER ASSESSMENT RATE (\$ per 100)	\$2.42	\$2.70	\$2.81	\$2.78	\$2.77	\$2.19	\$1.97	\$1.79	\$1.78	\$1.75	\$1.83
FUND PAYMENTS											
WAGE LOSS PAYMENTS	\$119,778,000	\$127,054,000	\$124,748,000	\$117,193,000	\$116,557,000	\$130,575,000	\$147,002,000	\$169,952,000	\$185,778,000	\$205,080,000	\$228,274,391
MEDICAL AID PAYMENTS	\$48,805,000	\$56,938,000	\$59,465,000	\$59,471,000	\$57,422,000	\$57,941,000	\$63,752,000	\$73,177,000	\$77,981,000	\$91,451,000	\$98,741,697
PENSION PAYMENTS	\$63,736,000	\$72,836,000	\$84,137,000	\$97,560,000	\$96,668,000	\$102,090,000	\$108,248,000	\$126,127,000	\$146,591,000	\$164,287,000	\$183,233,428
TOTAL	\$176,277,000	\$256,828,000	\$268,350,000	\$274,224,000	\$270,647,000	\$290,606,000	\$319,002,000	\$369,256,000	\$410,350,000	\$460,818,000	\$510,249,516
FUND BALANCE											
INVESTMENT INCOME		\$130,039,000	\$139,468,000	\$168,095,000	\$206,147,000	\$230,990,000	\$246,947,000	\$270,853,000	\$310,081,000	\$333,578,000	\$329,617,000
SURPLUS OR (UNFUNDED LIABILITY)		(\$504,350,000)	(\$433,559,000)	(\$358,353,000)	(\$31,844,000)	\$111,310,000	\$77,899,000	\$59,520,000	\$225,549,000	\$92,647,000	\$66,583,000

Table A-1 WCB Statistics, 1981-94 (Continued)

				1981-94 ANNUAL GROWTH RATE	1981-94 GROWTH RATE PER WORKER	1981-94 CPI DEFLATED GROWTH RATE	1981-90 ANNUAL GROWTH RATE	1981-90 GROWTH RATE PER WORKER	1981-90 CPI DEFLATED GROWTH RATE	1991-94 ANNUAL GROWTH RATE	1991-94 GROWTH RATE PER WORKER	1991-94 CPI DEFLATED GROWTH RATE
GENERAL COMPARISONS	1992	1993	1994									
AVERAGE EMPLOYMENT IN BC	1,619,000	1,666,000	1,733,000	2 0%			1 7%			3 0%		
UNEMPLOYMENT RATE IN BC	10 5%	9 7%	9 4%									
CPI ADJUSTMENT FACTOR	0 045	0 027	0 025	4 5%			5 4%			1 2%		
AVERAGE WEEKLY EARNINGS	\$545 42	\$557 50	\$577 15	3 6%	1 6%	-0 8%	3 9%	2 1%	-1 4%	2 8%	-0 2%	1 6%
MAXIMUM WEEKLY BENEFIT - JULY	\$690 41	\$727 81	\$737 88	6 6%	4 6%	2 1%	7 7%	5 9%	2 2%	3 8%	0 8%	2 6%
MINIMUM WEEKLY BENEFIT - JULY	\$259 61	\$264 29	\$264 90	4 5%	2 4%	0 0%	5 4%	3 6%	0 0%	1 2%	-1 7%	0 0%
NUMBER OF CLAIMS												
NEW CLAIMS REGISTERED AT WCB	197,793	195,117	197,911	0 1%	-1 9%		1 1%	-0 6%	-4 1%	-1 0%	-3 9%	
WAGE LOSS CLAIMS FIRST PAID - BC	81,003	79,503	81,488	-0 4%	-2 4%		0 1%	-1 6%	-5 0%	0 1%	-2 8%	
CLAIMS FIRST PAID BY TYPE												
Health Care Only Claims	66,510	56,186	59,297	-1 8%	-3 7%		0 6%	-1 1%		-4 7%	-7 5%	
Temporary Total Claims	77,274	75,601	77,108	-0 6%	-2 6%		-0 1%	-1 7%		-0 2%	-3 2%	
Permanent Disability Claims	3,583	3,778	4,228	3 7%	1 7%		4 6%	2 8%		7 2%	4 1%	
Fatal Claims	146	124	152	-2 0%	-3 9%		-1 7%	-3 4%		2 5%	-0 5%	
TOTAL	147,513	135,689	140,785	-1 0%	-3 0%		0 3%	-1 4%		-2 1%	-4 9%	
CLAIM COSTS CHARGED BY TYPE												
Health Care Only Claims (000)	\$17,429	\$18,401	\$21,654	12 0%	9 8%	7 2%	13 8%	11 9%	8 0%	5 6%	2 5%	4 3%
Temporary Total Claims (000)	\$317,380	\$353,311	\$389,799	7 6%	5 5%	3 0%	5 8%	4 0%	0 4%	12 8%	9 5%	11 4%
Permanent Disability Claims (000)	\$275,465	\$323,353	\$305,747	8 9%	6 7%	4 2%	7 5%	5 6%	2 0%	16 2%	12 8%	14 8%
Fatal Claims (000)	\$29,676	\$115,972	\$52,089	9 6%	7 4%	4 9%	5 1%	3 4%	-0 2%	27 2%	23 5%	25 7%
TOTAL	\$639 950	\$811,037	\$769,289	8 3%	6 2%	3 7%	6 6%	4 8%	1 1%	14 7%	11 3%	13 3%
TOTAL WCB STAFF	2,264	2,383	2,500	3 6%	1 6%		2 7%	0 1%		3 3%	0 2%	
COMPENSATION SERVICES STAFF	868	893	968	3 2%	1 2%		1 7%	0 0%		5 0%	1 9%	
Comp Services Staff/1000 WageLoss Claims	10 7	11 2	11 9									
COMP ADJUDICATORS (CA + CO)	230	247	257	3 5%	1 5%		1 8%	0 1%		8 5%	5 4%	
VOC REHAB CONSULTANTS	85	87	85	4 1%	2 1%		3 4%	1 7%		1 6%	-1 4%	
COMPENSATION SERVICES COST (000)	\$51,678	\$55,252	\$56,790	132 1%			10 2%	6 4%		8 1%	4 9%	
WCB ADMINISTRATIVE COST (000)	\$161,850	\$174,438	\$188,014	10 0%	7 8%		9 3%	7 5%		9 9%	6 7%	
NUMBER OF EMPLOYERS	112,525	113,929	138,249	-30 6%	-31 9%		-42 7%	-43 6%		8 2%	5 0%	
MAXIMUM WAGE RATE	\$48,000	\$50,600	\$51,300	-14 3%	-16 0%		-21 5%	-22 8%		3 9%	0 8%	
ASSESSABLE PAYROLLS (\$000,000)	\$34,256,000	\$36,390,000	\$42,728,000	251 5%	253 9%		487 9%	500 6%		12 7%	9 4%	
ASSESSMENTS (\$000)	\$644,987	\$739,801	\$876,922	186 5%	—		334 4%	—		15 1%	11 7%	
AVER ASSESSMENT RATE (\$ per 100)	\$1 95	\$2 11	\$2 14	9 2%	—		11 9%	—		3 5%	2 3%	
FUND PAYMENTS												
WAGE LOSS PAYMENTS	\$273,363,910	\$310,427,670	\$343,950,879	13 8%	11 6%	9 0%	13 9%	11 9%		14 6%	11 3%	13 3%
MEDICAL AID PAYMENTS	\$109,968,965	\$118,625,881	\$133,203,780	-2 1%	-4 1%	-6 3%	-7 0%	-8 6%		10 5%	7 3%	9 2%
PENSION PAYMENTS	\$256,618,227	\$381,983,143	\$292,133,693	347 9%	—	—	718 2%	—		16 8%	13 4%	15 4%
TOTAL	\$639,951,102	\$811,036,694	\$769,288,352	382 6%	—	—	817 5%	—		14 7%	11 3%	13 3%
FUND BALANCE												
INVESTMENT INCOME	\$316,122,000	\$356,621,000	\$345,373,000	353 7%	—	—	785 2%	—		1 6%	-1 4%	0 3%
SURPLUS OR (UNFUNDED LIABILITY)	(\$96,979,000)	(\$191,477,000)	(\$317,670,000)	—	—							

Table A—2 List of Persons Interviewed

WCB Senior Executives

Lee Doney, Chair, Panel of Public Administrators
Claude Heywood, Acting Chair, Board of Governors
Dale Parker, President and CEO, Workers' Compensation Board
Connie Munro, Chief Appeal Commissioner
Ron Buchhorn, Vice President, Compensation Services
Sid Fattedad, Vice President, Financial and Information Services
Ralph McGinn, Vice President, Prevention
Ed Bates, General Counsel

Other WCB Directors and Department Heads

Heather Greene, Legal Counsel to Governing Board
Peter Hopkins, Director, Policy and Research Unit
Hugh Legg, Executive Coordinator
Sonja Hadley, Registrar/Appeal Commissioner
Paul Petrie, Registrar/Appeal Commissioner
Terry Bogyo, Director, Vocational Rehabilitation Services, Community Relations, and Corporate Planning
Bud DuGas, Director, Assessments
Rob Ingraham, Director, Disability Awards
Thomas Q. Hum, Manager, Internal Audit and Evaluation
Dr. Bart Jessup, Director, Rehabilitation Centre
Greg Feehan, Assistant Director, Rehabilitation Centre
Christopher Cooke, Assistant Director, Rehabilitation Centre
Weldon Brake, Registrar, Medical Review
Dr. Craig Martin, Senior Medical Advisor
Dr. Beverly Tamboline, Senior Disability Awards Medical Adviser
R. Gordon van Dyck, Director, Human Resources/Labour Relations
Richard J. Hurst, Director, Central Client Services
Debra Mills, Director, Client Services — Area Officer
Michael Karton, Senior Policy Advisor
Keith Younie, Actuary
Ian Munroe, Executive Director, Compensation Services
Izabela Schultz, Director, Psychology Department
Irma Lamoureux, Treasurer, Finance Department
Linda Hart, Client Services Manager, Health Care Benefits

WCB Managers

Barney Biggs, Manager, Assessment Policy
Roger Piper, Manager, Finance, Compensation Services
Nadine Kolotyluk, Training Manager, Assessments
Nick Attewell, Executive Policy Adviser — Policy and Review
Irv Bell, Manager, SDOS, Assessments
Diane Gerwin, Manager, Coquitlam SDL
Klaus Kohlmeyer, Manager, Coquitlam SDL
Carol Sallenback, Assistant Manager, Disability Awards
Ron Hunter, Client Services Manager, Prince George Area Office
Linc Johnson, Client Services Manager, Occupational Disease Services
Rick Kroeker, Client Services Manager, Vancouver Centre and North
Rob MacDonald, Client Services Manager, Victoria Area Office
Steve Stesco, Client Services Manager, South Vancouver
James Watson, Client Services Manager, Surrey SDL
Vladmir Yakimov, Client Service Manager, Abbotsford SDL

Vocational Rehabilitation Department

Henry Harder, Acting Director, Vocational Rehabilitation
Jim Evans, Medical Advisor, Abbotsford SDL
Margaret MacLennan, Trainer
Margot Forman, Manager, Vocational Rehabilitation
Julie Peters, Manager, Vocational Rehabilitation
Ken Sykes, Manager, Vocational Rehabilitation
Judy Alexander, Vocational Rehabilitation Consultant, Head Injury Unit
Rebecca Chidley, Vocational Rehabilitation Consultant, Vancouver South SDL
John Chinack, Vocational Rehabilitation Consultant/Trainer
Jim Dayton, Vocational Rehabilitation Consultant, Vancouver South SDL
Daljit Dhariwal, Vocational Rehabilitation Consultant, Disability Awards
Kerri Favelle, Vocational Rehabilitation Research and Development Officer
Eric Fielder, Vocational Rehabilitation Consultant, BEEP
Chris Hartmann, Vocational Rehabilitation Consultant, Surrey SDL
John Hewitt, Vocational Rehabilitation Consultant,
Barry Ennis, Vocational Rehabilitation Consultant, Prince George
Goldie Lindenbach, Vocational Rehabilitation Consultant, Surrey SDL
Sandra Molloy, Vocational Rehabilitation Consultant
Sandra Muller, Vocational Rehabilitation Consultant, Richmond SDL
Susan Pandak, Job Search Program

Dave Rabson, Coordinator, Job Search Program
Cathy Bentley, Vocational Rehabilitation Consultant, Prince George
Area Office
Mike Clarke, Vocational Rehabilitation Consultant, Prince George
Area Office
J.R. Robinson, Vocational Rehabilitation Consultant, Research Team
Moira Smyth, Vocational Rehabilitation Consultant, Vancouver SDL
Patricia Swenson, Vocational Rehabilitation Consultant, Occupational
Disease Services
Larry Weatherly, Vocational Rehabilitation Consultant, Prince George

Representatives of the WCB Employees Union

Owen Carr, Chair, CEU Bargaining Committee
Bill Hawkins, President, CEU
Deborah Payment, Secretary, CEU

Other WCB Staff

Irv Bell, Manager, SDOS
Dennis Campbell, Compensation Adjudicator, ODS
Nigel Goode, Compensation Adjudicator, ODS
Gavin Muir, Compensation Adjudicator, Abbotsford Office
Simon Stubbs, Claims Officer, Disability Awards
Bill Brewer, Claims Adjudicator, Coquitlam Unit
Jennifer Glover, Claims Adjudicator
Rob Coulter, Adjudicator, Disability Awards
Anne McGuinness, Disability Awards Officer
Gordon Thomson, Claims Adjudicator, Disability Awards (CADA), Victoria
Janice Woodland, Adjudicator, Disability Awards
KC Jones, Collections Officer
Peter Gillan, Assessments Officer, Abbotsford SDL

Other Organizations

Colin Aykroyd, Policy Specialist, Policy and Planning Branch
P. Michael O'Brien, Chair, Workers' Compensation Review Board
Darlene Scribilo, Employers' Adviser
Blake H. Williams, Director, Workers' Adviser
Ted Mitchell, Ombudsman Office
Joanna Thomas, Ombudsman Office

Interested Parties Outside the System

James E. Dorsey, Commissioner, Health Sector Labour Relations
Commission
James Sayre, Community Legal Assistance Society, Vancouver
Robert Bucher, External Vocational Rehabilitation Advisory Council
Representative, General Manager and Chief Executive Office CU&C
Health Services Society
Ron Caldwell, Director, Claims and Compensation for the Mining
Association of British Columbia
Lonne Clark, Independent Outside Consultant, formerly with Coopers &
Lybrand
Russ J. St. Eloi, Plumber
Harold Fraser, International Union of Operation Engineers
Ruth Herman, Food and Commercial Workers
David Askey, United Association of Injured and Disabled Workers
Ralph Dotzler, United Association of Injured and Disabled Workers
Amy Hughes, United Association of Injured and Disabled Workers
Graham Stott, United Association of Injured and Disabled Workers
Tom Galbraith, British Columbia and Yukon Trades Council
Dr. Leonard Jenkins, Author of Study on Medical Review Panels
Frank Jonasen, Director, Office for Disability Issues for the Province
Dave Robertson, Employers Forum, and British Columbia Construction
Association
Dr. Martin Ray, Treasurer, Society of General Practitioners
Suomitra Sanatani, Director, Provincial Affairs, British Columbia and
Yukon for the Canadian Federation of Independent Business
Marty Smith, Carpenters Union
Ian May, Director of Safety & Health for Council of Forest Industries (COFI)
Bob McGregor, Workers' Compensation Representative, Teamster Union
Local, Vancouver

Grant McMillan, Vice President, Occupational Safety & Health with the
Council of Construction Associations

Carolyn Robertson, Iam Cares

Marguerite Randall, Assistant Business Manager, International Brotherhood
of Electrical Workers (IBEW)

John Weir, British Columbia Federation of Labour

E. Everett, IWA 1 — 217

Jim Parker, IWA

Judi Korbin, Consultant

Peter O'Callaghan, Consultant

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**WORKERS'
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